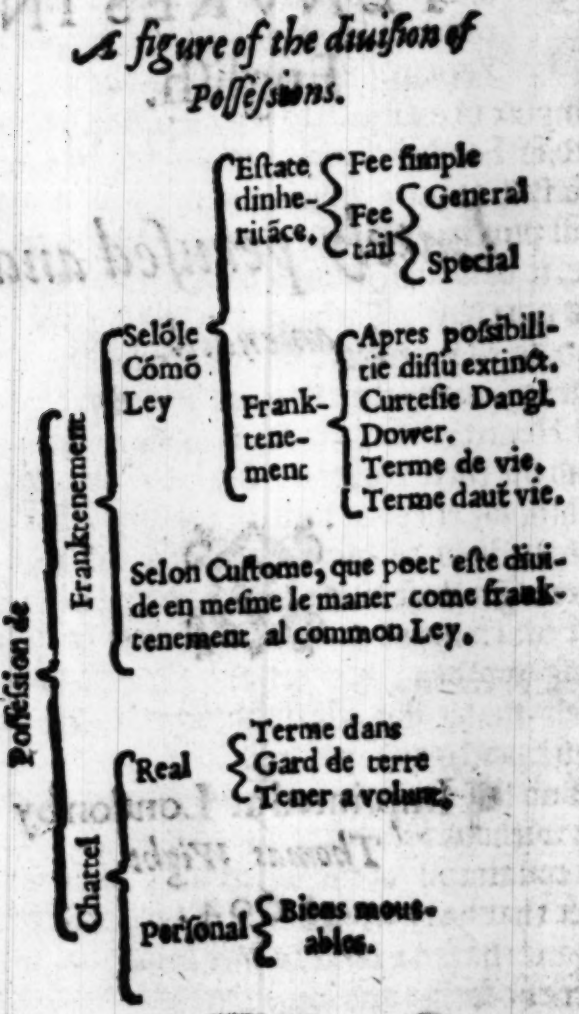
LITTLETONS TENVRES IN English.

Lately peruſed and amended.

¶ Imprinted at London by *Thomas Wight.* 1604.

Cum priuilegio Regiæ Maieſtatis.

A figure of the diuision of Possessions.



BRITISH MUSEUM

TEnant in fée simple is he which hath landes or tenements to holde to him and to his heires for euer: And it is called in Latine Feodum simplex: for Feodum is called inheritance, and Simplex is as much to say, as lawfull or pure, and so Feodum simplex is as much to say as lawfull or pure inheritance: For if a man will purchase landes or tenements in fée simple, it behoueth him to haue these wordes in his purchase, To haue and to hold vnto him and to his heires: for these wordes (his heires) make the estate of inheritance, Anno 10. Henrici 6. fol. 38. for if any man purchase land by these wordes: To haue and to hold to him for euer: or by such wordes, To haue and to hold to him and to his assignes for euer, In these two cases he hath none estate but for terme of life, for that that he lacketh these wordes (his heires,) which wordes onely make the estate of inheritance in all feoffements and graunts.

And if a man purchase lands in fée simple, & die without issu, euery one that is his next cosin collaterall, of the whole blood, how far soeuer that he be from him of degrée, may inherit & haue the same land as heir vnto him. But if there be father and son, & the father hath a brother which is vncle vnto the son, & the son purchaseth land in fée simple, & dieth without issu liuing ye father, the vncle shal haue the land, as

heire vnto the ſonne, and not to the father (yet the father is more nigh of blood vnto the ſon,) for that that there is a ground in the law, that inheritance may lineally diſcend, but not lineally aſcend: yet if the ſon in ſuch caſe die without iſſue, & his vncle entreth into the land as heire vnto the ſon (ſo as he ought by the law) and after if the vncle deceaſe without iſſue lyuing the father, then ſhall the father haue the land as heir vnto the vncle, & not as heir vnto the ſon, for that that he commeth vnto the land by collateral diſcent, & not by lineal aſcention.

And in ſuch caſe where the ſon purchaſeth land in fee ſimple, and dieth without iſſue, they of his blood on the fathers ſide ſhall inherite as heire vnto him, before any of the blood of the mothers ſide. But if he haue no heire on the fathers ſide, then ſhall the land diſcend vnto his heire on the mothers ſide. And this is the opinion of the Juſtices M.12.E.4.fol.34. But there it was holden if any land diſcend vnto a man by the fathers ſide which dyeth without iſſue, that his next heire on the fathers ſide ſhal inherit vnto him, that is to ſay, the next of blood of the father of the graundfathers ſide. And for default of ſuch an heire they that be of the fathers blood of the part of the mother of the father, (that is to ſay) the graundmother ought to inherite. And if there be no ſuch heire on the fathers ſide, then the Lord ſhall haue the land by Eſcheate. And ſo it is if a mã take a wife inheritor in fee ſimple,

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which hath iſſue a ſonne and dyeth, and the ſonne entreth into the tenements as ſonne and heire vnto his mother, and after dyeth without iſſue, the heires on the mothers ſide ought to inherite the tenements, and not the heires on the fathers ſide.

And if there be no heires on the mothers ſide, then the Lord of whom the ſame land is holden, ſhall haue the ſame land by eſcheat. In the ſame manner it is if lands diſcend vnto the ſonne on the fathers ſide, which entreth, & after dyeth without iſſue, the land ſhal diſcend vnto the heires on the fathers ſide, & not vnto the heires on the mothers ſide. And if there be none heires on the fathers ſide, then the Lord of whom the land is holden, ſhal haue the ſame land by eſcheat. And ſo ye may ſee the diuerſitie, where the ſonne purchaſeth landes in fée ſimple, and where he commeth vnto thoſe lands or tenements by diſcent on the fathers ſide, or on the mothers ſide.

Alſo if there be three brethren, & the middle brother purchaſeth lãd in fee ſimple and dyeth without iſſue, the elder brother ſhall haue the land by diſcent & not the yonger. Alſo if there be three brethren, and the yongeſt brother purchaſeth land in fee ſimple and dyeth without iſſue: the elder brother ſhall haue the land by diſcent, & not the middle brother, for that that the elder brother is more worthy of blod.

And it is to be vnderſtood, that no man ſhall haue land in fée ſimple by diſcent as heire vnto

any man, vnlesse he be his heire of the whole blood. For if a man haue issue two sonnes by two venters, and the elder purchaseth land in fée simple and dieth without issue, the yonger brother shal not haue the land, but the vncle of the elder brother, or some other his nigh cosin shall haue it, for that that the yonger is but of the halfe blood to the elder brother. And if a man haue a sonne and a daughter by one venter, and a sonne by an other venter, & the sonne by the first venter purchaseth land in fée simple and dieth without issue, the sister shal haue the land by discent as heire vnto her brother, and not the yonger brother, for that that the sister is of the whole blood to her elder brother.

And also where a man is seised of land in fée simple, and he hath issue a son and a daughter by one venter, and a sonne by an other venter and dyeth, and the elder son entreth, and dyeth without issue, the daughter shall haue the land and not the yonger sonne, and yet is the yonger son heire vnto his father, but not vnto his brother. But if the elder sonne enter not into the land after the death of his father, but dieth before entrie be made by him, then the yonger brother may enter and haue the land as heire vnto his father. But where the elder sonne in the case aforesaid, entreth after the death of his father, and thereof haue possession, then the sister shal haue the land: Quia possessio fratris de feodo simplici, facit sororem esse hered', For the possession of the brother in fée sim-

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ple maketh the sister to be heire.

But if there be two brethē by diuers benters, and the elder is seised in fee simple and dieth without issue, and his vncle entreth as heire vnto him, which also dieth without issue, thē the yonger brother may haue the land as heire vnto his vncle, because he is of the whole bloud to him though he be but of haife bloud vnto his elder brother.

And it is to be vnderstood that this worde (Inheritance) is not only vnderstood where a man hath landes or tenements by discent of heritage: But also euery fee simple or fee taile that a man hath by his purchase, may be said inheritance, for that, that his heires may inherite him. For in a writ of right that a man bringeth of land, that was of his owne purchase, the writ shall say: Quam clamat esse ius & hæreditatem suam: That is to say, which he claimeth to be his right & his inheritance. And so it shall be said in diuers other writs which a man or a woman bringeth of their owen purchase, as it appeareth by ꝑ Register.

And of such thinges as a man may haue a manuel occupation, possession, or receite, as of landes, tenements, rents, and such other, a man shall say in his pleading, and way of barre, that one such was seised in his demeine as of fee. But of such thinges as lye not in manuel occupation &c. as of aduowson of a Church, and such maner thing: there he shall say, that he was seised as of fee, and not in his

demeſne as of fée. And in latin it is in ỹ ſame caſe ſaid. Quod talis fuit ſeiſitus in dominico ſuo vt de feodo, that is to ſay, that ſuch a one was ſeiſed in his demeſne as of fée, and in the other, Quod talis fuit ſeiſitus vt de feodo, that is to ſay, that one ſuch was ſeiſed as of fée.

And note well that a man may not haue a more large ne greater eſtate of inheritance, then fée ſimple.

Alſo, purchaſe is called ỹ poſſeſſiõ of lands or tenements that a man hath by his déede or by his agrément, vnto which poſſeſſion he cõmeth, not by diſcent of any of his anceſtors, or of his coſins, but by his owne déed.

Fee taile.

TEnant in fée taile is by force of a ſtatute of Weſtminſter the ſecond, capitulo primo. For at the cõmon law before the ſaid ſtatute, all inheritances were fée ſimple. For all the gifts which bin ſpecified within the ſaid ſtatute, were fée ſimple cõditionally, as it appeareth by the rehearſall of the ſtatute. And now by the ſame ſtatute tenant in the taile is ſaid in two maners, that is to ſay, tenant in tayle generall, and tenant in tayle ſpeciall.

Tenant in taile generall, is where landes or tenements be giuen to a man and to his heires of his body begotten. In this caſe it is ſaid generall taile, for that that whatſoeuer woman that the tenant taketh to wife, if hée haue many wiues, and by each of them hath iſſue,

issue, yet each one of these issues by possibilitie may inherite the tenements by force of the said gift, because that euery such issue is of his body ingendred.

In the same maner it is, where lands & tenements be giuen to a woman & to the heires comming out of her bodie, howbeit that shee haue many husbands, yet ỹ issue that she may haue by each husband, may inherite as issue in the taile, by force of such gifts. And therefore such gifts been called generall tayle.

Tenant in taile speciall, is where landes and tenements be giuen vnto a man and his wife & the heires of their two bodies begotten. In such case none may inherite by force of such gift, but those that be ingendred betweene them two, & is called especiall tayle, for that if the wife die and he taketh another wife & hath issue, the issue of the second wife shall neuer inherite by force of such gift, Nor also the issue of the second husband if the first husband die.

In the same maner it is, where lands and tenements be giuen by a man vnto another with a wife, which is the daughter or cosin to the giuer, in Frankmariage, which gift hath inheritance by these wordes (Frankmariage) vnto it annexed, howbeit that it be not expressly sayd or rehearsed in the gift, that is to say, that these Donees shall haue these landes or tenements to them and to their heires betweene them two ingendred, & this

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is laid especiall tayle, for that the issue of the second wife may not inherite.

And note well, that this word Talliare, is to say to set vnto some certaintie, or els limit vnto some certaine inheritance, And for that that it is limitted & set in certaine, what issue shall inherite by force of such gifts, and how long that the inheritance shal endure: Therefore it is called in Latin Feodum talliatum. i. hæreditas in quadam certitudine limitata. For if tenant in general taile die without issue, the donor or his heires shall enter as in their reuersion: In the same wise is it of the tenant in the tayle speciall &c. For in euery gift of the tayle without more saying, the reuersion of fée simple is in the donour.

And the donées and their heires shall doe to the donour and to his heires such seruices as the donour doth vnto the Lord next aboue. Except the donées in franke mariage, which shall hold quietly from euery manner seruice, (vnlesse it be for fealtie) vntill the fourth degrée be past. And after that the fourth degrée is past, the issue in the fift degrée, and so forth, the other issues after him, shall hold of the donour & of his heires as they hold ouer, as is aforesaid.

And the degrées in franke mariage shall be accompted in such maner, that is to say, from the donour to the donées in frank mariage the first degrée, for that that the wife that is one of the donées ought to be daughter, sister, or

other

other cosin to the donor. And from the donées vnto their issue shall be accompted the second degrée. And from their issue vnto their issue, the third degrée, and so forth &c.

And the cause is, for that after euery such gift, the issues that come of the donor, and the issues that come of the donées after the fourth degrée past of both parties in such fourme to be accompted, may betwixt them by the law of holie Church intermarrie. And that the donée in frankmariage shall be the first degrée of the fower degrées, a man may see in a plea vpon a writ of Right of warde, Anno 31. Edwardi 3. where the plaintife pleadeth that his ayel or grandfather was seysed of certaine landes &c. And that he held of an other by knights seruice &c. which gaue the land vnto one Raufe Holland with his sister in franke mariage &c. And also these tailes before said, be specified in the said statute of Westminster the second.

And there bée diuers other estates in the tayle, howbeit that they be not specified by expresse wordes in the said estatute, but they be taken by the equitie of the Statute: As if landes be giuen vnto a man and to his heires males of his bodie engendred, in such case his heire male shall inherite, and the issue female shall neuer inherite: yet in these other tailes aforesaid it is otherwise. In the same maner it is if landes be giuen to a man and to his heires females of his bodie engendred,

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In this case his issue females shall inherite by force and fourme of the said gifte, and not the issue male, for that in such cases where the gift is who ought to inherite, and who not, the will of the donour shall be obserued.

And in case where lands be giuen vnto a man & to his heires males issuing of his body, and he hath issue two sonnes & deceaseth, the elder sonne entreth as heire male, & hath issue a daughter and deceaseth, his brother shall haue the land and not the daughter, for that the brother is heire male. But it shalbe otherwise in these other tailes aforesaid, which been specified in the said statute, the daughter shall inherite before the brother.

And if lands be gyuen vnto a man, and to his heires males of his body ingendred, and he hath issue a daughter, which hath issue a sonne and deceaseth, and after that the donour deceaseth: in this case the sonne of the daughter shall not inherit by force of the taile, for that whosoeuer shall inherite by force of a gifte in the tayle made vnto the heires males, behoueth to conuey his discent alway to the males, Mich. decimo octauo Edwardi tertij fol. 25. But in such case the donour shall enter, for that the donée is dead without issue male in the law. In somuch that that the issue of the daughter may not conuey to him the discent by heire male. And in the same maner it is where lands be giuen to a man and to his wife and to his heires

males

males of their two bodies ingendred.

Also, if tenements be giuen to a man and his wife, and to the heires of the body of the man ingendred, in this case the husband hath estate in the generall taile, and the wife but estate for terme of life.

And if lands be giuen to the husband and to the wife, and to the heires of the husband which he ingendreth of the body of the wife: In this case the husband hath estate in the speciall taile, and the wife but for terme of life.

And if the gift be made to the husband and to the wife, and to the heires of the wife of her body by the husband ingendred: then the wife hath estate in the speciall taile, and the husband but for terme of life. But if lands be giuen to the husband and the wife, and to the heires that the husband ingendreth on the body of the wife: In this case both haue estate in the taile, for that this word (heires) is limitted no more to the one then to the other.

Also if lands be giuen to a man and to his heires that he ingendreth on the body of his wife: In this case the husband hath estate in the taile speciall, and the wife nothing.

Also if a man haue issue a sonne, and deceaseth, and the land is giuen to the sonne, and to the heires of the body of his father ingendred, this is a good taile, and yet the father was dead at the time of the gift.

Also

Also there be many other estates in the taile by the equitie of the said estatute, that be not specified here. But if a man giue landes or tenements to an other, to haue and to hold to him and to his heires males, or to his heires females, he to whom such gift is made hath fée simple, for that it is not limitted by the gift of what body the issue male or female shal be, and so it may not in any thing be taken by the equitie of the said estatute, and therefore he hath fée simple.

Tenant in taile after possibilitie of issue extinct.

TEnant in the taile after possibilitie of the issue extinct, is where as landes or tenements be giuen vnto a man and to his wife in speciall taile, if one of them decease without issue, he that suruiueth is tenant in the taile after possibilitie of issue extinct. And if they haue issue, during the life of the issue, he that suruiueth shal not be said Tenant in the taile after possibilitie of issue extinct: yet if the issue decease without issue, so that there bee none aliue that may inherite by force of the taile, then he that suruiueth of the donées is tenant in the taile after possibilitie of issue extinct.

Also, if landes bée giuen to a man and to his heires that be ingendred on the body of his wife: In this case the wife hath nought in the tenements, and the husband is seised

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as donée in speciall tayle. And in this case if the wife decease without issue of her body ingendred by her husband, then the husband is tenant in the tayle after possibilitie of issue extinct.

And note well, that none may be tenaunt in the taile after possibilitie of issue extinct, but one of the donées, or the donée in speciall tayle, for the donée in general taile may neuer be said tenant in the taile after possibilitie of issue extinct, for that alway during his life, he may by possibility haue issue that may inherite by force of the same taile. And so in the same manner the issue that is heire vnto the donees in a speciall tayle, may not be said tenant in taile after possibility &c. causa qua supra.

And tenant in taile after possibility of issue extinct shall neuer be punished of wast, for the inheritance that once was within him An. 10. Hen. 6. fol. 1. But he in the reuersion may enter if he doth alien in fée. An. 45. E. 3. fol. 22.

Tenant by the Curtesie of England.

TEnaunt by the Curtesie of England, is where a mã taketh a wife seised in fée simple, or in fée taile generall, or as heire in the taile special, & hath issue by the same wife male or female borne aliue. The issue after being dead or aliue, if the wife decease, the husband shal hold the same during his life by the Law

of

of England, and this is called tenant by the Curtesie, for that it is not vsed in any other Realme but onely in England. And some say that he shal not be said tenant by the Curtesie, but if the childe that hee hath by his wife be heard cry, for by the cry is the proofe that the child that he had by his wife, was borne aliue.

Tenaunt in Dower.

TEnant in Dower is, where a mā is seised of certaine lands or tenements in fee simple or in generall taile, or as heire in the taile speciall, and taketh a wife and deceaseth, the wife after the decease of her husbād shalbe endowed of the third part of such lands or tenemēts that were her husbands any time during the couerture, to haue and to hold the same wife in seueralty, by meetes and bounds for terme of her life, whether shee haue by her husband issue or none, and of what age that the wife be, so that shee passe the age of nine yeares at the time of her husbands death, or els she shal not be endowed.

And note well, that by the common law the wife shall not haue for her Dower but ỹ third part of the tenements, which were her husbands during the Espousels. By custome of some countrey she shall haue the halfe, and by custome of Towne, or Borough, shee shall haue the whole: And in all these cases she shal be said tenant in Dower.

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Also there is two other maner of Dowers, that is to say, dower called dowment at the Church dooze, and dower called dowment by the fathers assent. Dowment at the church dooze, is where a man of full age is seised in fee simple which shall be wedded vnto a wife, when hee commeth to the Church dooze, and there after affiance and truth pleight made betweene them, endoweth his wife of his whole land, or of the halfe, or lesse parcell, and there openly declareth the quantitie, and the certainty of his land that shee shall haue for ther Dower: In this case the wife after the death of her husband shall enter into the said quantity of land, of which her husband endowed her without the assignement of anie man. Dowmēt by the fathers assent is, where the father is seised of landes or tenements in fee, and his sonne and heire apparant (when hee is wedded) endoweth his wife at the Church dooze of parcell of the landes or tenemēts of his fathers, by the assent of his father, and assigneth the quantity of the parcels: In this case after the death of the sonne, the wife shall enter into the same parcell without the assignement of any other. But it hath bin said in this case, that it behoueth the wife to haue a deede of the father, proouing his assent and consent of such endowment. And if after the death of her husband shee enter and agree to any such dower of the said two dowers at the Church dooze, then she is concluded to clayme

any other Dower by the common law of any landes or tenements, which were of the said husband. But if shee will, shee may refuse such dower at the Church doore, and then shee may be endowed after the course of the Common Law. And note well, that no wife shall be endowed of the fathers assent, in the forme aforesaid, saue where the husband is sonne & heire apparant to his father.

Inquire of these two cases of Endowement at the Church doore &c. if the wife at the time of the death of her husband passe not the age of nine yeeres, if shee shall haue such dower or no.

And note well, that in all cases where the certaintie appeareth, what landes or tenements the wife shall haue for her Dower, the wife may enter after the death of her husband, without assignement of anie other: But where the certaintie appeareth not, as to bee endowed of the third part, to haue in seuerall, or to be endowed of the halfe after the custome, to hold in seuerally: In such cases it behoueth that her Dower bee vnto her assigned after the death of her husband, because it is not limitted before the assignment, what partes of landes or tenements shee shall haue for her Dower. But if there be two Ioyntenants of certaine landes in fee, and the one alieneth that, that to him pertayneth and belongeth, to another in fee, which taketh a wife and after dyeth: In this case

the wife for her Dower shall haue the third part of the haife that her husband purchased, to hold in common, and occupie in common as her part amounteth, with the heire of her husband, and with the other Iointenaunt which alened not, for that in such case her Dower may bee assigned by meetes and boundes.

And it is to bee vnderstode, that the wife shall not be endowed of landes or tenements that her husband iointly held with an other at the time of his death. But where he holdeth in common otherwise it is, as in the case aforesaid. And it is to wit, that if the tenant in taile endowe his wife at the Church dore as is aforesaid, that shall serue for little or nought to the wife, for that, that after the death of her husband the issue in the taile may enter vpon the possession of the wife, and so may he in reuersion if there be no issue in the taile aliue.

Also, if a man seised in fee simple being within age, endow his wife at the Church dore, and dyeth, and the wife entreth: In this case the heire of the husband may put her out. But otherwise it is as it seemeth where the father is seised in fee, and the sonne within age endowe his wife, of his fathers assent, the father then being of full age.

And there is another Dower which is called Dowement De la pluis beale: And that is in such case, that a man is seised of xl. acres

of land, and he holdeth xx. of the said xl. acres of one man by knights seruice, and the other xx. acres of an other in socage, and taketh a wife, and hath issue a sonne, and dyeth, his sonne being within the age of fourteene yeres, and the Lord of whom the land is holden by knights seruice, entreth into the xx. acres of land holden of him, and them hath and occupyeth as warden in chiualrie during the childes nonage, & the childes mother entreth in the remnant, and it occupyeth as garden or warden in Socage: If in this case the wife bying a writ of Dower against the Warden in Chiualrie, to bee endowed of the tenements holden by knights seruice in the kings Court, or in any other Court, the Garden in chiualrie may plead in such case all the matter, and shew how the wife is warden in Socage as is aforesaid, and pray that it may be adiudged by the Court, that the wife endow her selfe of the most faire, called Plus beale, of the tenements that she hath as warden in socage, after the value of the third part that she claymeth to haue of the tenements in chiualrie by her writ of Dower, and if the wife may not gainesay it, then the iudgement shall be made, that the warden in chiualry shal hold the lands holden of him during the nonage of the childe quite from the woman &c. And that the woman may endow her selfe of the most faire part of the landes that she hath as warden in Socage to the value of the third

part

part that the warden in chiualry hath &c.

And after such iudgement giuen, the wife may take her neighbors, and in their presence endow her selfe by meetes and bounds of the fayrest part of the tenements that shee hath, as warden in Socage, to the value of the third part of the lands that the warden in Chiualry hath, and that to haue and holde for terme of her life. And such dower is called Dower of the fayrest part, or De pluis beale.

with this agreeth P.45. Edw.3. fol.4. But there it was said, that after the time that the heire come to his full age, the wife shall haue a new action of Dower against the heire, to be endowed of the third part of all that the man died seised. And note well, that such dowment may not be, but where the iudgement is giuen in the kings court, or in some other court. And the wife may do this for saluation of the estate of the warden in chiualry during the nonage of the child. And so yee may see fiue manner of dowers: that is to say, Dower by the common Law, Dower by custome, Dower at the Church doore, Dower of the Fathers assent, and Dower of the most faire. And remember that in euery case where a man taketh a wife seised of such estate of tenements &c. so that the issue that he hath by his wife may by possibilitie inherite the same tenements of such estate that the wife hath, as heire to the wife: In such case after the wife is dead, hee shall haue the same tenements by the Curtesie of Eng-

land and otherwise not.

And also in euery case where the wife taketh an husband seised of such estate of tenements &c. so that by possibility it may happen the wife to haue some issue by her husband, and that the same issue may by possibilitie inherite the same tenements of such estate that the husband had as heire to his Father, of such tenements she shall haue her dower, and otherwise not: For if the tenements be giuen vnto a man and to his heires that he getteth on his wiues body, in such case the wife hath nought in the tenements, and the husband hath estate but as donée in special taile. Yet if the husband die without issue, the same wife shall be endowed of the same tenements, for that the issue that shée by possibilitie might haue had by the same husband, may inherite the same tenements. But if the wife decease, lyuing the husband, which after taketh another wife, the second wife shal not be endowed in this case. Causa qua supra.

A man was seised of certaine landes, and toke wife, and after alened the same landes with warrantie, and after the feoffour and the feoffée died, & the wife of the feoffor bringeth an action of Dower against the issue of the feoffée, and he vouched the heire of the feoffour, and during the voucher and not termined, the wife of the feoffée bringeth an action of Dower against the heire of the feoffée, and demaundeth the third part of all that her husband was seised, and would not demaund

maund the third part of those two partes that her husband was seised, it was adiudged that shee should haue no iudgement vntill the time that the other plee were determined.

And also note that Vauisor saith, that if a man be seised of lands, and committeth Felonie, and alieneth, & after is attainted, the wife shall haue good action of dower against the feoffee. But if it be escheted vnto the king, or vnto the Lord, shee shall haue no writ of dower. And so see the diuersitie, and inquire the cause.

Tenant for terme of life.

TEnant for terme of life is, where a man letteth landes or tenements to another for terme of life of the lessee, or for terme of life of another man: In such case the lessee is tenant for terme of life. But by Common language, hee that holdeth for terme of his owne life, is called tenant for terme of life, and hee that holdeth for terme of another mans life, is called tenaunt for terme of another mans life. And it is to be vnderstood, that there is feoffour and feoffee, donour and donee, lessour and lessee. The feoffour is properly where a man infeoffeth another in any landes or tenements in fee simple, he that maketh the feoffement is called the feoffor, and he to whom the feoffement is made, is called ỹ feoffee. And the donour is properly, where a man giueth certaine landes or tenements to another in

the taile, hée that maketh the gift is called donor, and hee to whom the gift is made is called donée. And lessour is properly where a man letteth to another certaine lands or tenements for terme of life, for terme of yéres, or to hold at will, hée that maketh the Lease is called lessour, and hée to whom the Lease is made is called lessée, and euery one that hath estate in landes or tenements for terme of his owne life, or for terme of another mans life, is called tenant of freehold. And none of lesse estate may haue freehold, but they of greater estate may haue freehold, for tenaunt in fée simple hath freehold, and tenant in the tayle hath also freehold.

Tenant for terme of yeares.

TEnant for terme of yéres is, where a man letteth landes or tenements to another for terme of certaine yeres after the number of yeres that is accorded betweéne the lessor and the lessée, and when the lessée entreth by force of ꝯ lease, then is he tenant for terme of yeres, and if the lessor in such case reserue to him a yéerely rent vpon such lease, hée may chuse for to distraine for the rent in the tenements letten, or els hée may haue an Action of debt for the arrerages against the lessée. But in such case it behoueth that the lessour bée seised in the same tenements at the time of his lease, for

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it is a good plée for the lessée to say, that the lessor had nothing in the tenemẽts at the time of the lease, except the lease be made by deed indented, in which case then such plée lieth not for the lessée to plead.

And it is to be vnderstood, that in a Lease for terme of yéeres, by deed or without deed, it needeth no liuery of seisin to be made to the lessée, but he may enter whensoeuer hée will by force of the same lease. But of feoffementes made in the Countrey or gifts in the tayle, or leases for terme of life, in such cases where freehold shall passe, if it be by deed or without deed, it behoueth to haue liuery of seisin &c. But if a man let landes or tenements by deed or without deede for terme of yéeres, the remainder ouer to another for terme of life, or in the taile, or in fée, then in such case it behoueth that the lessor make liuery of seisin to the lessée for terme of yéeres, or els there shall nothing passe to them in the remainder, though the lessée enter in the tenemẽts. And if the termor in such case enter before any such liuery of seisin made vnto him, then is the freehold and the reuersion in the lessor. But if he make any liuery of seisin vnto the lessée, then is the freehold with the fée to them in the remainder after the forme of the graunt, & will of the lessor.

And if a man will make a feoffement by deede or without deede, of landes or tenements that hée hath in many Townes in one Shire, if the liuery of seisin be made in one par=

parcell of the tenements in one Towne in the name of all, it sufficeth for all the other landes or tenements comprehended in the same feffement, in all other townes in the same Shire. But if a mā make a deed of feoffemēt of lands or tenements in diuers Shires, there it behoueth him to haue in euery shire a liuery of seisin. And in such case a man shall haue by the graunt of another fee simple, fee taile, or freehold, without liuery of seisin. And if two men be, and each of them is seised of a quantitie of land within one shire, & the one graunteth his land to the other in exchange for that land that the other hath, and in the same maner the other granteth his land vnto the first grantor in exchange for the land that the first grantor hath: In this case each may enter in ỹ others lands so taken in exchange, without any liuery of seisin. And such exchange made by words, of tenements within the same Shire without anie writing is good enough. And if the landes or tenements be in diuers shires, that is to say, if that the one haue in one shire, & ỹ th'other haue in another shire, it behoueth to haue a deed indented made betweene them of such exchange.

And note, that in exchanges it behoueth that the estates that both parties haue in the lands so exchanged, be equall: For if the one willeth & granteth that the other shall haue his land in the taile, for the land that hee hath of the grant of the other in fee simple, though the other agree to that, yet this exchange is but voide, for

that

that the eſtates be not euen.

In the ſame maner it is where it is graun-ted and agreed betweene them, that the one ſhal haue in the one land fée taile, & the other ſhall haue in the other land but terme of life. Or if one ſhall haue in the one land fee taile gene-rall, and the other in the other land fée taile eſpeciall &c. So alway it behoueth that in ex-change the eſtate of both parties be euen, that is to ſay, if the one haue fée ſimple in the one land, that the other ſhall haue ſuch eſtate in the other land, and if the one haue fee taile in the one land, then the other ſhall haue likewiſe in the other land. Et ſic de alijs ſtatibus. But it is nothing to charge of the euen value of the lands, for though that the land of the one is ſo much more in value then the land of the other, this is nothing to the purpoſe, ſo that the eſtates made by the exchange be euen, and in exchange be two graunts, for euery partie graunteth his land to the other in exchange, and in each of their graunts mention ſhall be made of the exchange.

And if a man let land to an other for terme of yéres, though the leſſor die before the leſſée enter into the tenements, yet may he enter in-to the tenements after the death of the leſſor, for that, that the leſſée by force of the leaſe hath right incontinent to haue the tenements af-ter the fourme of the leaſe. But if a man make a déede of feoffement vnto an other, and a letter of attorney to a man to deliuer to him

seisin by force of the same deede, yet if the liuery of seisin bee not made in the life of him that made the deede, it auayleth not, for that the other hath no maner of right to haue the tenements after the purport of the deede before the liuerie of seisin &c. And if no liuerie be made, then after the death of him that made the deed, the right of such tenemẽts is incontinently in his heire, or in some other. Also if tenements be let to a man for terme of halfe a yeere, or for terme of a quarter of a yeere &c. In such case if the lessee make wast, the lessour shall haue against him a writ of wast, and the writ shall say, Quod tenet ad terminum annorum. But he shall haue a speciall declaration vpon the troth of this matter, and the plea shall not abate the writ, for that that he may haue no other writ vpon the matter. An. 7. H. 7. fol. 1.

Tenant at will.

TEnant at will is, where landes or tenements bee letten by a man vnto an other: To haue and to hold to him at the will of the lessor, by force of which lease the lessee is in possession: In such case the lessee is called Tenant at will, for that he hath no certaine sure estate, for the lessor may put him out at what time it pleaseth him: yet if the lessee sow the land, & the lessor (after the sowing and before that his graynes be ripe) put him out, yet shall the lessee haue his graynes, and shal haue free egresse and regresse to reap and to carry his

his graynes, for that he will not at what time his lessour would enter vpon him. Otherwise it is if tenant for terme of yeeres before the end of his terme soweth the land, and the terme end before that his graynes be ripe: In this case the lessor, or he in the reuersion shall haue the graynes, for that the fermor knew well the certeintie of his terme, & when his terme should be ended.

Also, if a house be let to a man to hold at will, by force of which the lessée entreth into the house, within which house he bringeth his houshold stuffe, and after the lessour putteth him out, yet shall he haue frée entrie, egresse, and regresse in the same house by reasonable time to carrie his goods and houshold stuffe. And if a man be seised of a house in fée simple, fee taile, or for terme of lyfe, the which hath certaine goods within the same house, and maketh his executors and deceaseth, whosoeuer after his death hath the house, yet shal his executors haue frée entrie, egresse, and regresse to carrie out of the house the goods of their testators by a reasonable time.

Also, if a man make a deede of feoffement vnto an other of certaine land, and deliuereth to him the deed, but no liuery of seisin: In this case he to whom the deede is made may enter into the land, and hold and occupie it at the will of him that made the deed, for that, that it is proued by the words of the deede, that it is his will that the other shal haue the land. But

he that made the deede, may put him out when he will.

Also if an house be let to holde at will, the lessee is not holden to sustaine or repayre the house, as tenant for terme of yeeres is holden to do. But if the lessee at will make voluntarie wast, as in pulling downe of houses, or in cutting or felling of trees: It is said that the lessour shal haue for that against him an action of Trespas. As if I deliuer to a man my sheep to dunge or marle his land, or mine oxen to eyre his land, and he slayeth the beasts, I may well haue an action of Trespas against him notwithstanding the deliuerie.

Also if the lessour vpon such lease at will reserue vnto him a yeerely rent, he may distraine for the rent behind, or haue for that an action of Debt at his owne choise. Hill' 6. Rich. 2. in a Replevin.

Tenant by Copie of Court Rolle.

TEnant by Copie of Court Rolle is, as if a man be seised of a Manour, within which Manour there is a custome, & hath been vsed in time out of minde, that certaine tenants within that same manour haue vsed to haue landes or tenements, to holde to them and to their heires in fee simple, or in fee taile, or for terme of life &c. at the will of the Lord, after the custome of the same Manor, and such a tenant may not alyen the land by deede, for then

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the lord may enter as in a thing forfait to him But if he will alien his land to another, him behoueth after some custome to surrender the tenements in some Court &c. into the Lordes handes, to the vse of him that shall haue the estate in such forme, or to such effect.

Ad hanc Curiam venit A. de B. & sursum reddidit in eadem Curia, vnum messuagium &c. in manus domini, ad vsum E. de A. & hæredum suorum, vel hæredum de corpore suo exeunt vel pro termino vitæ suæ &c. Et super hoc venit prædictus E. de A. & cepit de domino in eadem Curia messuagium prædictum &c. Habendum & tenendum sibi & hæredibus suis, vel sibi & hæredibus de corpore suo exeuntibus, vel sibi ad terminum vitæ suæ, ad voluntatem domini, secundum consuetudinem manerij, faciend. & reddend. inde reddirus debit, seruitia, & consuetudines inde prius debita, & de iure consueta, Et dat domino de fine &c. Et fecit domino fidelitatem &c. That is to say, A. of B. commeth vnto this Court, and surrendreth in the same court a mease &c. into the handes of the Lord, to the vse of E. of A. and his heires, or the heires issuing of his bodie, or for terme of life &c. And vppon that, commeth the foresaid E. of A. and taketh of the Lord in the same court, the foresaid mease &c. To haue and to hold to him and to his heires, or to him and to his heires issuing of his body, or to him for terme of life, at the Lordes will, after the custome of the manor to doe and yeild

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therefore rents, debts, seruices, and customes thereof before due and accustomed &c. and giueth the Lord for a fine &c. and maketh vnto the Lord his fealtie &c. And such tenaunts be called tenants by Copie of Court Rolle, for that they haue no other euidences concerning their tenements, but the Copies of the Court Rolles: And such tenants shall not implead nor be impleaded for their tenements by the Kings writ: But if they will implead other for their tenements they shall haue a plaint made in the Court of the Lord in such forme, or to such effect. A. de B. quæritur versus C. de D. in placito terræ, videlicet, de vno messuagio, quadraginta acris terr̃, quatuor acris prati &c. cum pertinentijs. Et facit protestationem sequi quærelam istam in natura breuis Domini Regis Assisæ mortis antecessoris ad communem Legem, vel breuis domini Regis Assisæ nouæ disseis. ad communem Legem, That is to say, A. of B. complaineth against C. of D. of a plee of land: that is to say, of a mease, and fortie acres of land, foure acres of meadowe &c. with the appurtenances. And maketh protestation to sue his plaint in nature of the kings writ of Assise of the death of his anncestor at the common Law, or by a writ of our Soueraigne Lord the king, of Assise of noue disseisin at the Common Law, or in nature of some other writ &c. pledges to prosecute, F. G. &c. And though that some such tenaunts haue inheritance after the custome of the maner, yet they

they haue none estate but at the Lordes will, and after the course of the common Law, for it is said, if the Lorde put them out, they haue no other remedy but to sue vnto the Lord by petition: For if they had any other remedie they should not be said tenants at the Lordes will after the custome of the Mannor, but the Lord will not breake the custome that is reasonable in such cases. But Brian chiefe Iustice saith, that his opinion alwaies hath beene, and alwaies shall be, if such a tenaunt by custome (paying his seruices) be cast out by the Lord, he shall haue an action of trespas against him, H. 2. E. 4 fol. 80. And likewise was the opinion of Danby chiefe Iustice M. 7 E. 4. fol. 19. for hee saith, that the tenant by the Custome, is alwei inheritable to haue the land after the custome, alwei as hee that hath franketenement by the common Law.

TEnants by the Yarde, be in such nature as tenants by Copie of Court Roll: But the cause for which they be called tenaunts by the rodde, or yarde, is, for that when they will surrender their tenements into the Lordes hand, to the vse of another, they shall haue a little yarde or rodde by the custome and vse, in their handes, which they shall deliuer vnto the Steward or Baylife, after the Custome and vse of the mannor, and hee that shall haue the land, shall take the same land in the Court, and his taking shall bee entred in the Rolle. And the Steward, or the bailife, according to

the custome, shall deliuer vnto him that taketh the land, the same yard or another yarde in the name of seisin. And for this cause they be called Tenants by the yarde. But they haue none other Euidence but Copie of the Court Rolle.

And also in diuers Lordships and Mannors there is such a custome, if such a tenant that holdeth by the Custome will alien his his lands or tenements, he may surrender his lands vnto the Bayliffe, or to the Reeue, or to two honest men of ỹ same Lordship, to ỹ vse of him that shall haue the land, to haue in fee simple, fee taile, or for terme of life &c. and all this shalbe presented at the next Court. And then he that shall haue the land by Copie of Court Roll, shall haue the same land after the intent of the surrender. And it is to wit, that in diuers Lordships, and diuers manors, there be made diuers Customes in such cases, as to take tenements, & as to plead, & as touching other things and customes to be done, and all that, that is not against reason, may well be admitted and allowed. And such tenants that hold after the custome of a seigniorie, or after the custome of a mannor, though they haue estate of inheritance after the custome of the lordship, or of the manor, yet because they haue not any freehold by the course of the Commun Law, they be called tenants of base tenure.

And diuers diuersities there be betweene a tenant at will, which is in by the lease of his

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lesloz by the course of the common law, and tenant after the custome of the manoz in the fourme afozesaid. Foz tenant at will after the custome may haue estate of inheritance, as it is afozesaid at the lozds will after the custome and vsage of the Manoz: But if a man haue lands oz tenements which be not within such Manoz oz Lozdship where such custome hath been vsed in the fourme afozesaid, and will let such landes oz tenements to an other, to haue and to hold to him and to his heires at the will of his lesloz, these wozdes, to the heires of the lessée be void, foz this is the cause, if the lessée die, and his heire enter, the lesloz shall haue a good action of Trespas against him, but not so against the heire of the tenant by the custome in any case &c. foz that the custome of the Manour in some case may helpe him to barre his Lozd in an action of Trespas.

Also Tenant by the custome in some places ought to repaire and sustaine the houses, and the other tenant at will ought not. Also one by the custome shall doe fealtie, and the other not. And diuers other diuerslities there be betweene them.

Thus endeth the first booke.

HOmage is a moſt honourable ſeruice and moſt humble ſeruice of reuerence that a Franktenaunt may doe to hys Lord: For when the Tenaunt ſhall make Homage to his Lord, he ſhall be vngirt, and his head vncouered, and his Lord ſhall ſit, and the Tenaunt ſhall kneele before him on both his knees, and hold his hands iointly together betweene the handes of his Lord, and ſhall ſay thus. I become your man from this day forwarde of life and limme, and of earthly worſhip, and vnto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to holde of you, (ſauing the faith that I owe vnto our Soueraigne Lord the king.) And then the Lord ſo ſitting ſhall kiſſe him.

But if an Abbot, or Prior, or any other man of religion ſhall make homage vnto his Lord, he ſhall not ſay, I become your man, for that he hath profeſſed himſelfe onely to be Gods man: But he ſhall ſay thus, I doe you homage, and vnto you ſhall be true and faithfull, and beare you faith for the tenements that I claime to hold of you: Sauing the faith that I owe vnto our ſoueraigne Lord the King.

Alſo, if a woman ſole ſhall make Homage vnto the Lord, ſhee ſhall not ſay, I become your woman, for that is not conuenient for a woman to ſay, that ſhee ſhall become a woman to any but onely to her hus-

band

band when she is wedded, But she shall say: I make vnto you Homage, and to you shall be true and faithfull, and shall beare you faith for the tenements that I hold of you, saving the faith that I owe to our soueraigne Lord the King.

But if a man haue seuerall tenancies which he holdeth of seuerall Lordes, that is to say, euery tenancy by homage: Then when he maketh homage vnto one of his Lordes, he shall say in the end of his homage, Saving the faith that I owe vnto the King, and vnto my other Lords.

And note well, that none make Homage, but such as haue estate in fée simple, or in fée taile in his owne right, or in any other mans right: For it is a ground in the Law, that he that hath estate but for terme of life, shal make none homage, nor take none homage.

For if a woman haue landes or tenements in fée simple, or in fée taile, which shee holdeth of her Lord by homage, and taketh an husband, and hath issue, then the husband in the life of the wife shall make homage, for that he hath title to haue the land by the curtesie, if he suruiue his wife. And also he holdeth in the right of his wife. But afore issue betweene them, the homage shall be made in both their names: But if the wife decease before homage made by the husband in the wiues life, and the husband holdeth himselfe in as tenant by the curtesie, he shall make no homage vnto

his Lord, for that he hath then none estate but for terme of life. More shall be said of Homage in the tenure of Homage auncestrell.

Fealty.

FEalty is as much to say, as Fidelitas in Latin, and when a franktenant shall make fealty vnto the Lord, he shall hold his right hand vpon a booke, and shall say thus:

Here you this my Lord, that I vnto you shall be faithfull and true, and beare you faith for the landes & tenements, that I claime to hold of you, and truely to you shall do the customes and seruices that I ought to do vnto you at termes assigned, as God me helpe & all his Saints, & then he kissed the booke: But he shall not kneele when he maketh his fealty, nor shall make such humble reuerence, as is aforesaid in Homage. And great diuersitie there is had betweene making of Fealty, and of Homage: For homage may not be made but to the Lord himselfe. But the Steward of the Lords court, or the Baylife may take Fealty for the Lord.

Also tenant for terme of life shall make fealty, and yet he shall make none homage. And diuers other diuersities there be betweene homage and fealty.

Also a man may see a good note, Anno 15. Edw. 2. where and how a man and his wife made homage and fealty in the common bank, which is written in such forme. Note that

John Lewknor & Elizabeth his wife made homage vnto William Thorpe in this manner: The one and the other held ioyntly their hands betweene ỹ hands of William Thorpe, & the husband said in this wise: Wee vnto you make homage, & beare you faith for the landes that we hold of A. your conusor, which hath graunted your seruices in B. and in C. and the other townes &c. against al mẽ (sauing the faith that wee owe vnto our souereigne Lord the King, and to his heires, and to our other Lordes) and the one and the other kissed him. And after they made fealty, and the one & the other held their hands togither vpon a Booke, and the husband said the words, & both kissed the booke. More shall be said of Fealtie in the tenure of Socage, & in the tenure of Frankealmoigne, and in the tenure of Homage auncestrel.

Escuage.

EScuage is called in latin Scutagium, that is to say, seruice of shield, And such a tenant that holdeth his land by Escuage, holdeth by knights seruice. And also it is cõmonly said, that some hold by a fee of knights seruice, and some by ỹ halfe fee of knights seruice &c. And it is said, that when the king maketh a voiage royal into Scotland for to subdue the Scots, euer that holdeth by a fee of knightes seruice, behoueth to be with the king by fortie dayes, well & conuenably arrayed for the warre. And

Likewise hee that holdeth his land by the halfe of a fee by Knights seruice, ought to be with the king by xx. daies. And he that holdeth his land by the fourth part of a fee by Knights seruice, him behoueth to bee with the king by ten dayes: and so after the quantie, hee that hath more, to doe more, and he that hath lesse, to doe lesse.

But it appeareth by the plees and arguments made in a good plee vpon a writ of Detinue of an Obligation, brought by one Henry Gray, An. 7. E. 3. fol. 29. that it needeth not to him that holdeth by Escuage to go himselfe, if he will find an able person for the warre conuenable arrayed for the warre, to goe with the king, & that seemeth good reason: for it may be, that he that holdeth by such seruice is sicke, in such wise that he may not goe nor ride.

And also an Abbot or any other man of religion, or a woman sole that holdeth by such seruice, ought not in such case to goe in proper person. And Sir William Herle that time chiefe Iustice of the common place saide in the said plee, that Escuage shall not be graunted, but where the king himselfe goeth in proper person. And so it abode in iudgement of the same plee, if these xl. dayes shall be accompted from the day of the Muster of the kings host made by the commons and the kinges commaundement: Or els from the day that the king first entreth into Scotland &c. therefore inquire of this matter.

And

And after such voyage into Scotland it is commonly said that by the authority of Parliament, the Escuage shalbe set and put in certaine: that is to say, a certaine summe of money how much euery one ỹ holdeth by a whole fee of knights seruice, which was not in his owne proper person, nor none other for him with the King, shall pay vnto the Lord, of whom he holdeth his land by escuage. As put case that it was ordained by authority of parliamẽt, that euery one that holdeth by a whole fee by knights seruice, which was not with the King, shall pay to his Lord xl. s. That he that holdeth by the halfe of a fee by a knights seruice, shall pay vnto his Lord but xx. s. and so who more, more, and who lesse, lesse. And some tenants hold, that if Escuage runne by authority of Parliament to any summe of money, that they shall pay but the halfe of that summe, and some but the fourth part of that summe. But because the Escuage that they shall pay is not certaine, for that it is at no certaine what the Parliament wil assesse the Escuage, they hold by knights seruice. But otherwise it is of Escuage certaine, of which shalbe spoken of in the tenure of Socage.

And if a man speake generally of Escuage, it shall be vnderstood by the common speech of Escuage not certaine, which is knights seruice: And such Escuage draweth vnto him Homage, and Homage draweth vnto him Fealtie, for fealtie is incident to euery manner of

seruice, but to the tenure of frankalmoigne, as it shalbe said hereafter in the tenure of frankealmoigne: So as he that holdeth by Escuage holdeth by homage, Fealty, and Escuage.

And it is to be vnderstood, that when Escuage is so sessed by authoritie of Parliament, euery Lord of whom the land is holden by escuage, shall haue the Escuage so sessed by the Parliament, because it is vnderstood by the Law, that at the beginning such tenements were giuen by the Lords to hold by such seruices to defend their Lordes as well as the King, and to set in quiet and rest their Lords against the King of Scots aforesaid. And for that such tenements came first of the Lordes, it is reason that they haue the escuage of their tenants.

And the Lords in such case may distrayne for the Escuage so assessed, or they may haue the Kings writs, directed vnto the Shirifes of the Shires, to leuy such Escuage for them, as it appeareth by the Register fol. 88.

But of such tenants that hold of the King by Escuage, which were not with the king in Scotland, the King himselfe shall haue the escuage.

Item in such case aforesaid, where the King maketh a voyage royall into Scotland, and the Escuage is assessed by Parliament, if the Lord distraine his tenant that holdeth of him by seruice of a whole knights fee, for the escuage so assessed &c. And the tenant pleadeth

and

and will auerre that he was with the king in Scotland &c. by xl. dayes, and the Lord will auerre the contrarie, it is ſaid that it ſhall be tried by the certification of the Marſhal of the kings hoſt in writing vnder his ſeale, which ſhall be ſent to the Juſtices.

Homage, Eſcuage, and Fealty.

TEnure by Homage, Eſcuage, and Fealty, is to hold by knights ſeruice, and it draweth vnto it ward, mariage, and reliefe: For when ſuch a tenant dieth, his heire male being within the age of xxj. yeeres, the Lord ſhall haue the land holden of him vnto the age of the heire of one and twenty yeeres, which is called full age, for that ſuch an heire by the vnderſtanding of the Law, is not able to do knights ſeruice before the age of 21. yeeres.

And alſo if ſuch an heire be not married at the time of the death of his auncеſter, then the Lord ſhall haue the ward and marriage of him. But if ſuch a tenant die, his heire female being of the age of foweрteene yeeres or more then the Lord ſhal not haue the ward neither of the land nor of the bodie, for that a woman of ſuch age may haue a huſband able to doe knights ſeruice. But if ſuch an heire female be within the age of foureteene yeere and not married at the time of the death of her auncеſter, then the Lord ſhall haue the

ſwarde of the lands holden of him, till the age of ſuch an heire female of 16. yéeres: For that it is giuen by the ſtatute of weſtm 1. cap. 12. that by two yéeres next following the ſaid 14. yéeres, the Lord may tender a conuenient mariage without diſparaging of ſuch an heire female. And if the Lord do not tender her ſuch mariage within the ſaid two yéeres, then ſhée at the end of the ſaid two yéeres may enter and put out the Lord. But if ſuch an heire female be married within the age of 14. yéeres in the life of the auncéſter, and the auncéſter die, ſhe being within the age of 14. yéeres, the Lord ſhall haue but the ward of the land till an end of 14. yéeres of age of ſuch an heire female: And then her huſband and ſhée may enter into the land & put out the Lord, for this is out of the caſe of the ſtatute: Inſomuch that the Lord cannot tender marriage to her that is maried &c. For before the ſaid ſtatute of weſtm 1. ſuch iſſue female that was within age of 14. yéeres at the time of the death of her auncéſter, and after that ſhée had accompliſhed the age of fourtéene yéeres without any tender of marriage to her by the Lord, ſuch an heire female then might enter into the land, and put out the Lord, as appeareth by the rehearſall, and by the wordes of the ſame eſtatute: So that the ſaid Statute was made in ſuch caſe all for the aduauntage of the Lord as it ſéemeth. But yet that at all times it is vnderſtood by the wordes of the

ſame

ſame eſtatute, that the Lord ſhall not haue the two yeare after the xiiij. yeare, as is afore-ſaid.

And note well, that the full age of the male and female after the common ſpeech is ſaid the age of xxj. And the age of diſcretion is ſaid the age xiiij. yeares, for a childe at ſuch age, which is wedded within ſuch age to a woman, may agree to the mariage or diſagree.

And if the warden in chiualry marrie once his warde within the age of xiiij. yeares, and after the age of xiiij. yeares he diſagreeth to the marriage. It is ſaid by ſome folke that the childe is not holden by the Law to be married an other time by his warden, for that the warden had once the mariage of him, and therefore he was out of his ward, as concerning the ward of his bodie. And when he had once the mariage of him, and therefore was out of his ward, he ſhall no more haue the marriage of him. In the ſame maner it is, if the warden marrie him, and the wife die, the childe being within age of xiiij. yeares, or xxj. yeares. And that the childe may diſagree to ſuch marriage when he commeth to thage of xiiij. yeare, it is proued by the wordes of the Statute of Merton cap. 6. that ſaith thus: De dominis qui maritauerint illos quos habent in cuſtodia ſua, villanis, et alijs, ſicut burgenſibus vbi diſparagentur, ſi tales homines fuerint infra xiiij. annos, & talis ætatis quod matrimonio conſentire non poſſint, tunc ſi parentes

rentes illius conquęrentᷣ, dominus ille amittat cuſtodiam illam vſquè ad ætatem hęredis. Et omne commodū quod inde recepᷣ fuerit conuertatur in commodum hęredis infra ętatem exiſtentis ſecundum diſpoſitionem parentum, propter dedecus impoſitum. Si autem fuerit 14. annorum & vltra quod conſentire poterit, & tali maritagio conſenſerit, nulla ſequatur pœna. And ſo it is proued by the ſame ſtatute that no diſparagement ſhall be, but where that he that hath the ward marieth him within the age of 14. yeres.

Alſo it hath bin a queſtion how theſe words ſhould be vnderſtood: Si parentes conquerantur &c. And it ſeemeth vnto ſome that conſidering the ſtatute of Magna charta cap. 6. that willeth that hæredes maritentur abſquè diſparagatione &c. vpon which the ſaid ſtatute of Merton vpon this point is grounded, as it ſeemeth, and in ſomuch as it was neuer ſeene that any action was brought vpon the ſtatute of Merton for ſuch diſparaging againſt the warden, and if any action may be taken vpon ſuch matter, it ſhall be taken by common preſumption before this time, or at ſome time to be put in vre, that theſe wordes ſhall be vnderſtood in ſuch manner, Si parentes conquerantur. i. Si parentes inter ſe lamentantur, which is as much to ſay, that if the Coſins of ſuch a childe haue cauſe to make lamentation and complaint amongſt them for the ſhame done to their coſin ſo diſparaged,

which

which is in a maner a shame to them all, then may the next cosin to whom the heritage may not discend enter, and put out the warden in Chiualry. And if he will not, another cosin of the childs may doe it, and he to take the issues and profits vnto the vse of the child, and of that yeeld the child account when he commeth vnto his full age: Or els the child within age may enter himselfe, & put out the warden &c. Sed quære de hoc.

Also there are many other kinds of disparagings, which be not specified in ỹ same statute, As if the heire that is in ward bee married vnto one that hath but one foote, or one hand, or eys deformed, or lame, or hauing an horrible disease, or els a great and continuall infirmity: Or if the heire male be married to a woman past child bearing. And many other causes of disparaging there be, but inquire for them, for it is good matter to learne. And of heires males that bee within age of one and twentie yeeres after the death of their aunce-sters vnmarried: In such case the Lord shall haue the marriage of such an heire, and haue space and time to tender to him conuenable mariage without disparaging within the same time of 21. yeeres.

And it is to wit, that the heire in such case may chuse if hee will bee married or no. But if the Lord which is called wardeine in Chiualrie, tender a conuenable marriage to such an Heire within the age

age of xxj. yeeres, without disparaging, & the heire refuse, and marry not himselfe within the same age: Then the said Warden shall haue the value of the marriage of such an heire. But if such an heire male marrie himselfe within the age of xxj. yeeres, against the will of the Warden in chiualrie, then shall the Warden haue double the value of the Marriage, by force of the Statute of Merton aforesaid, as in the same Statute is more fully comprised.

And diuers tenants hold of their Lords by Knights seruice, & yet they hold not by Escuage, nor pay no Escuage, as they that holde their landes by Castleward: that is to say, to keepe a Tower of a Castle, or a gaole, or some other place by reasonable warning, whē their Lords heare tell that enemies will come, or be come into England. And in many other cases a man may hold by Knights seruice, and yet he holdeth not by Escuage, nor payeth no Escuage, as shall be said in the tenure of Graund Sergeantie. But in all cases where a man holdeth by knights seruice, such seruices draw to the Lord, Ward, and Mariage.

And if a tenant that holdeth of his Lord by seruice of an whole Knights fee die, his heire being of full age of on and twentie yeeres, his heire shal pay vnto the Lord C.s. for a reliefe, And he that holdeth by the halfe fee shall pay L. s.

Also if a man hold his land of the Lord by the seruice of two Knights fees, then the

heire

heire at full age at the time of the death of his auncester, ſhall pay to his Lord ten pound for reliefe.

Alſo if there be graundfather, mother, and ſonne, and the mother dieth liuing the father of the ſonne, and after the grandfather which held his land by Knights ſeruice dyeth ſeyſed, and the land diſcendeth to the ſonne of the mother, as heire to the graundfather, which is within age: In ſuch caſe the Lord ſhall haue the ward of the land, but not the warde of the heire: For that none ſhalbe in ward of his body liuing his father, becauſe the father during his life ſhall haue the marriage of his heire apparant, and not the Lord. Otherwiſe it is, if the father bee dead liuing the mother, where the land holden in Chiualrie diſcendeth to the ſonne on the fathers ſide &c.

Alſo if a man be ſeiſed of land which is holden by knights ſeruice, and maketh a Feffement in fee to his vſe, and dyeth ſeiſed of the vſe, his heire within age, and no will by him declared, the Lord ſhall haue a Writ of Right, of the body and the land, like as if the tenant had died ſeiſed of the demeſne. And if the heire be of full age at the death of his auncester, in ſuch a caſe he ſhall pay reliefe, like as if he had been ſeiſed of a demeſne, and that is by the ſtatute of An. 4. H. 7. cap. 17.

Alſo there is a warden in right in chiualry, and a warden in deed in chiualry. Warden in right in chiualry, is where the Lord becauſe

of his Lordship is seised of the warde of the land, and the heire vt supra. Warden in deede in chiualry, is where the Lord in such case after his seising graunteth by deed, or without deed, the ward of the land, or of the here, or of both to another man, by force of which graunt the grauntee is in possession, then is the grantee called wadeine in deed &c.

Tenure in Socage.

TEnure in Socage, is where the tenaunt holdeth of his Lorde the tenancie by certaine seruice for all manner of seruice, so that the seruice be not knights seruice: As where a man holdeth his land of his Lord by fealtie and certaine rent for all maner of seruice: Or els where a man holdeth his land by homage, fealtie, & certain rent, for all maner of seruices, for homage by it selfe maketh not Knightes seruice.

Also a man may hold of his Lord onely by fealty, and such tenure is Tenure in Socage, for euery tenure that is not tenure in Chiualrie, is tenure in Socage. And it is said, that the cause wherefore such tenure is said, & hath the name of tenure in Socage, is this: Quia hoc Socag. idem est, quod seruic. Socæ, Et hæc Soca Socæ, idem est quod Caruca. s. one Oxe, or one plough land.

And in olde time before the limitation

of

of time out of mind, great part of the tenants that helde of their Lords by Socage, ought to come with their Ploughes euery of the said tenants by certaine daies in the yeere, to eyre and sowe the Lordes lands of his owne graines: But for that such works were done for the liuelode and sustenance of their Lords, they were acquited against their Lord of all manner of seruices. And for this that such seruice was done with their Ploughes, such tenure was called tenure in Socage. And after that such seruices were chaunged into diuers other manner seruices, by consent of the tenants, and by the desire of their Lords, that is to say, into a yeerely rent &c. But yet the name of Socage abydeth: And in diuers places tenaunts yet doe such seruice with their Ploughes vnto their Lord, so that all manner of seruices that be not Tenures in knights seruice, be called Tenures in Socage.

Also if a man hold of his Lord by Escuage certaine, that is to say in such fourme, that when Escuage runneth and is assessed by the Parliament to a more summe, or to a lesse summe, that the tenant shall pay to the Lord but halfe a marke for Escuage, & neither more ne lesse to how great summe or little summe that the escuage runneth, in this case because the escuage is certaine before that any escuage is assessed &c. Such tenure is tenure in Socage and not knights seruice. But where the

ſumme that the tenant ſhall pay for eſcuage, is not certaine, that is to ſay, where it may be that the ſumme that the tenant ſhall pay for eſcuage may be at one time more, and an other teſſe, after that it is aſſeſſed &c. then ſuch tenure is tenure by knights ſeruice.

Alſo if a man hold his land for to pay certeine rent to his Lord for Caſtleward, ſuch tenure is tenure in Socage. But where the tenant himſelfe ought by him, or by any other to make caſtleward, ſuch is tenure by knights ſeruice.

Alſo in all caſes where the tenant holdeth of his Lord to pay to him any certaine rent, that rent is called rent ſeruice.

Alſo in ſuch tenures in ſocage, if the tenant haue iſſue and die, his iſſue being within the age of 14. yeeres, then the next friend of that heire to whom the heritage may not diſcend ſhal haue the ward of the land, and of the heire vnto the age of the heire of 14. yeeres, and ſuch warden is called warden in Socage. For if land diſcend to the heire by the fathers ſide, then the mother, or ſome other nigh Coſin of the mothers ſide ſhall haue the ward. And if land diſcend to the heire by the mothers ſide, then the father or the next friend of the fathers ſide ſhall haue the ward of ſuch landes or tenements. And when the heire commeth to the age of 14. yeeres complete, he may enter & put out his warden in Socage, and occupie the land himſelfe if he will. And ſuch warden in

Socage shall take no issues or profits of such lands or tenements to his owne vse, but only to the vse and profite of the heire, and of that shall yéeld accompt when it pleaseth the heire, after that the heire hath accomplished the age of fourteéne yéeres. But such a warden vpon such accompt shall haue allowance, of all his reasonable costes and expences of all things. And if such a warden marrie the heire within age of fourteéne yéere, he shall make accompt to the heire or to his executors of the value of the marriage, though he take nothing for the value of the marriage, for that it shall be counted his owne follie, that hée would marrie him without taking the value of the mariage without hée marrie him to such a marriage that is worth in value as much as the marriage of the heire &c. Also if any other man that is not a nigh friend &c. occupie the lands and tenements of the heire as warden in Socage, hée shall be compelled to yéeld accompt vnto the heire, aswell as his next friende: For it is no plea for him in a writ of accompt to say that he is not his nigh friend &c. But hée shall answere whether hée occuppeth the landes or tenementes as warden in Socage or not. But inquire if after that the heire haue accomplished the age of fourteéne yéere, and the warden in socage continually occuppeth the land till the heire commeth to full age of xxj. yéeres: If the heire at his full age shall haue an action of Accompt against the

warden for the time that he hath occupied after the said fourteene yeeres, as against his warden in socage, or against him as against his bailife.

Also if warden in chiualrie make his executors, and dye, the heire being within age &c. the executors shall haue the ward, during the nonage. But if the wardein in Socage make executors and die, the heire being within the age of foureteene yeares, his executors shall not haue the warde, but an other nigh friend to whom the heritage may not discend, shall haue the warde. And the cause of diuersitie is, for that the warden in Chiualrie hath the warde to his proper vse, and the warden in Socage hath not the ward to his owne vse, but to the vse of the heire. And in such case where the warden in socage dyeth before any such accompt made by him, the heire is of that without remedie, for that no writ of accompt lyeth against the executors, but onely for the King.

Also the Lord of whom the land is holden in Socage after the death of his tenant, shall haue relefe in such fourme. If the tenaunt holde by Fealtie, and certaine rent to pay yeerely &c. If the termes of payment bee to pay by two termes of the yeere, or by fower termes of the yeere, the Lord shall haue of the heire of his tenaunt, as much as the rent amounteth that he should pay by yeere. As if the tenaunt holde of the

Lord by fealty, and x. shillinges of rent, payable at certaine termes of the yeere, then the heire shal pay to the Lord x.s. for relefe aboue tenne shillings that hee shall pay for the rent. Looke more in the Statute of Anno 19. H.7. cap. 15.

And in such case case after the death of the tenant, such relefe is due to the Lord incontinent, of what age soeuer the heire be, for that such a Lord may not haue the ward of the bodie nor the land of the heire. And the Lord in such case ought not to abide the payment of his relefe, after the termes and dayes of paiment of the rent, but he ought to haue his relefe incontinent: And therefore hee may incontinent distraine after the death of his tenant for the relefe.

In the same maner it is, where a tenãt holdeth of his Lord by fealtie, and by a pound of Comin, or a pound of Pepper by the yeere, and the tenant die, the Lord shall haue for his relefe a pound of Comin, or a pound of Pepper.

In the same manner is it, where the tenant holdeth to pay by the yeere a certaine nũber of Capõs or Hens, or a paire of Gloues, or certaine bushels of wheate. and such other maner things. But in some case the Lord ought to abide to distraine for his relefe till a certaine time. As if the tenant hold of his Lord by a rose, or by a bushell of roses, to pay at the feast of S. John Baptist. If such a tenant die in winter, then the Lord may not distraine for his

his reliefe &c. vntill the time that the Roses by the course of the yeere may haue their growings &c. Et sic de similibus.

Also if any peraduenture will aske why a man may not hold of his Lord by fealty onely for all maner of seruices, insomuch, that when the tenant shall make his fealty, he shall sweare to his Lord that he shall do all seruices due, & when hee hath made fealty in such case, there is none other seruice due: To this it may be said, that where the tenant holdeth his land of his Lord, it behoueth that he ought to doe to his Lord some maner of seruice, for if the tenant nor his heires ought to doe no maner of seruice to his lord, nor to his heire, thē by long time continued it should be out of remēbrance of whom the land was holden, of the Lord, or of his heire, or not, & then more oft & more soner will men say, that the land is not holden of the Lord nor of his heires, then otherwise: and vpon this the Lord shall loose his Escheate of his land, or percase other forfaiture or profite that he might haue of the land: So it is reason that the Lord & his heires haue some seruice done vnto him, for a proofe, & a witnes that the land is holden of them, and because fealtie is incident to all maner tenures, except tenure in Frankalmoigne, as shalbe said in Frankalmoigne, & because that the Lord will not at the beginning of the tenure haue any other seruices but fealty, it is reason that a mā may hold of his Lord only by fealty, and when hee hath

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made his fealty he hath done all his ſeruice.

Alſo if a man let to another for terme of life certaine landes or tenements, without ſpeaking of any thing to yeeld to the leſſor, yet he ſhal do to ỹ leſſor fealty, for that hee holdeth of him. And if a Leaſe be made to a man for terme of yéeres, it is ſaid the leſſée ſhall doe to the leſſor fealty, for that he holdeth of him. And this is prooued well by the wordes in a writ of waſte, when the leſſour hath cauſe to bring a writ of waſt againſt him, the which writ ſhal ſay, that the leſſée holdeth the tenements of the leſſour for terme of yéeres: ſo that writ proueth a tenure betweéne them &c. But he that is tenant at will after the courſe of the Common Law, ſhal not make fealty, becauſe he hath no maner of a ſure eſtate. But otherwiſe it is of tenant after the cuſtome of the manor, becauſe that he is bound to do fealty to his Lord for two cauſes: One is, becauſe of cuſtome, the other is, becauſe that he taketh his eſtate in ſuch forme to doe fealty.

Franke almoigne.

TEnaunt in Franke almoigne is, where an Abbot or Prior, or another man of Religion, or of holy Church, holdeth of his Lord in Franke almoigne: that is to ſay in Latin, in liberam Elemoſynam, that is to ſay, in freealmes. And ſuch tenure began firſt in old time when a man in old time was ſeiſed of landes or tenements in his demeſne as of fée, and of the

the same land enfeoffed an Abbot and his conuent, or Prior and his Couent, to haue and to hold of them and their successours in pure and perpetuall almes, or in Frankealmoigne, or by such wordes, to hold of the grauntor, or of the lessor and his heires in free almes: In such case the tenements were holden in frankealmoigne. And in the same manner it is, where the landes or tenementes were graunted in olde time to a Deane and Chapter, and to their successors, or to a Parson of a Church, and to his successors, or to any other man of holy Church, and to his successours in free almes, if hee had capacity to take such grants or feoffements &c. And such as holde in free almes, be bound of right afore God to do Orisons, Prayers, and Masses, and other diuine seruices for the soules of the grantors or feoffors, or for the soules of their heires which be dead, and for the prosperitie & good life of them that be aliue.

And for this they doe at no time no manner of fealtie vnto their Lordes, for that such diuine seruice is better for them before GOD, then any doing of Fealtie. And also these wordes, free almes or frankalmoigne, exclude the lord to haue any worldly or temporall seruice, but onely to haue diuine and speciall seruice to be done for him &c. And if such that hold their tenements in free almes, or frankealmoigne will not, or fayle to doe such Diuine Seruice as is sayd, the Lord may not

distraine

distraine them for the seruices vndone &c. because it is not set in certaine, what seruice they ought to doe: but the Lord may of them complaine to their Ordinary, praying him that hee will set punishment and correction of that. And also to prouide and see that such negligence be no more done, and the Ordinarie of right ought to doe that &c.

But where an Abbot or a Prior holdeth of his Lord by certaine diuine seruice in certain to be done, as for to sing a Masse euery friday in the weeke, for the soules &c. or euery yere at such a day to sing Placebo & Dirige &c. or to finde a Chaplein to sing Masse &c. or to distribute in almes to an hundred poore men, an hundred pence at such a day, in such case if such diuine seruice be not done, the Lord may distraine &c. for that this diuine seruice is in certain by their tenure what the Abbot or the Prior ought to do. And in such case the Lord shall haue the fealty &c. as it seemeth.

And such tenure is not said tenure in free almes, but it is said tenure by diuine seruice. for in tenure in free almes, or franke almoigne, no mention is made of any maner certaine seruice, for none may hold in free almes or frank almoigne if there be expressed any maner certain seruice that he ought to do.

And if it be demaunded if the tenant in frankmariage shall doe Fealty to the donour or to his heires before the fowerth degree be passed &c. It seemeth that yea, for he is not like

like as to this intent to a tenant in frée almes or frank almoigne, for the tenant in frée almes shall do (because of his tenure) diuine seruice for the Lord as it is aforesaid, and that he is charged to do by the law of holy Church, and for that he is excused and discharged of fealty. But tenant in franke marriage doth not by his tenure such seruice.

And if he do not to his Lord fealty, then he doth not to his Lord any manner of seruice neither spirituall nor temporall, which should be an inconuenience and against reason, that a man should haue estate of inheritance of an other, and yet the Lord shall haue no maner of seruice of him as it seemeth, and so it seemeth that he shall doe fealtie to his Lord vntill the fourth degrée be past &c. And when he hath done fealty, he hath done all his seruice. And if an Abbot hold of his Lord in frée almes, & the Abbot and his Couent vnder their common seale alien the same land to a seculer man in fée simple, in this case the seculer man shall do fealty to the Lord, for that he may not hold of his Lord in frée almes, for if the Lord ought not to haue of him fealty, then he shall haue of him no maner of seruice which should be an inconuenience where he is Lord, and the tenements are holden of him.

Also if a man grant at this day to an Abbot or to a Prior, lands or tenements in frée almes or franke almoigne, these wordes frée almes or franke almoigne bée voyde, for that

it is ordained by the Statute which is called Quia emptores terrarum, which statute was made Anno 18. Regis E. primi, That no man may alien or grant lands or tenements in fée simple to hold of himselfe, so that if a man be seised of certain lands or tenements which he holdeth of his Lord by knights seruice, and at this day he graunteth the same land to an Abbot &c. in frée almes or franke almoigne, the Abbot shall holde immediatly the same tenements by knights seruice of the Lord of his grauntor, because of the same estatute: so that no man may hold in frée almes, or in franke almoigne, but if it be by title of prescription, or by force of a graunt made to some of his predecessors before the same estatute: But the King may giue landes or tenements in fée simple to hold in frée almes or frankalmoigne, or by other seruice, for he is out of the case of the Statute. And note well, that no man may hold landes or tenements in frée almes, but of the grauntor or his heires, and that for the primitie of the gift, and therfore it is said, that if there be Lord, mesne, and tenant, and the tenant is an Abbot that holdeth of his mesne in franke almoigne, if the mesne die without heire, then the mesnaltie shall come by eschete to the said Lord aboue, and the Abbot then shall hold of him immediatly onely by fealty, and shal do him fealty, for that he may not hold of him in franke almoigne &c.

And note well, where that such a man of reli-

religion holdeth his lands of his Lord in frē almes &c. his Lord is bound by the law to acquite him of euery manner of seruice that any Lord aboue him will demaund or aske of the same tenants. And if he acquite him not but suffer him to be distrained &c. then he shal haue against his Lord a writ of Mesne, and recouer his damages and costes of his suit.

Homage auncestrel.

TEnure by Homage auncestrel is, where a tenant holdeth his land of his Lord by homage, and the same tenant and his auncesters whose heire hee is, haue helde the same land of the said Lord and of his auncesters, whose heire the lord is, from time out of mind by homage, & haue done homage vnto him which is called Homage auncestrel because of the continuance which hath bēen by title of prescription in the tenancy, in the blood of the tenant, & also in the lordship in the blood of the Lord. And such seruice by homage auncestrel draweth to it warranty, if the Lord that is alive hath receiued homage of such tenaunt, hee ought to warrant his tenant when he is impleaded of the lands holden of him by homage auncestrel. And all such seruice by homage auncestrel draweth to it acquitance, that is to say, the Lord ought to acquite hys tenant against all other Lords aboue him of euery maner of seruice. And it is said, that if such tenant bee impleaded by a Præcipe quod red-

reddat &c. and he voucheth his Lord to warrantie, which commeth in by processe, and asketh of the tenant what hee hath to binde him to warrantie, and he sheweth how hée and his auncesters, whose heire he is, haue holden the land of the Voucher and of his auncesters, whose heire he his, by Homage from time out of mind: if the Lord which is vouched receiued none homage of the tenant, nor of ane of his auncestors, the Lord then if hee will, may disclaime in the Lordship, and so put out his tenant of his warrantie. But if the Lorde which is vouched hath receiued homage of the tenant, or of any of his auncestors, then may he not disclaime, but he is bound by the law to warrant the tenant, & then if the tenant leese the land in default of the vouchée, he shall recouer in value against the vouchée of the landes or tenements that the vouchée had at the time of the voucher, or at any time after.

And it is to wit, that in euery case where the Lord may disclaime in his lordship by the law, in Court of Record, and of that will disclaime, his seignioríe is extinct, and the tenant shall hold of the lord next aboue his lord which so disclaimeth. But if an Abbot or Priour be vouched by force of Homage auncestrel &c. though hée haue neuer taken Homage &c. yet he cannot disclaime in this case, nor in none other case, for they cannot deuest that thing in fée, which hath beene vested in their house, Paschæ 10. E. 4.

Also

Also if a man that holdeth his land by Homage auncestrel alieneth his land to another in fée, the alienée shall do homage to his Lord, But hee holdeth not of his Lord by homage auncestrel, for that the tenancy was not continued in the blood of the auncestors of the alienée, nor the alienée shall neuer haue the warrantie of his land of his Lord, for that the continuance of the tenancy in the tenant & in his blood by the alienation is discontinued. And so see, that the tenant that holdeth his land by Homage auncestrel of the Lord, and such a tenant alieneth in fée, though that hee take estate of the alienée againe in fée, hee holdeth the land by Homage, but not by Homage auncestrell.

Also it is said, that if a man hold his land of his Lord by homage and fealty, & hee hath made homage and fealty to his Lord, and the Lord hath issue a Sonne and dyeth, and the Lordship discendeth to his sonne: In this case the tenaunt which did Homage to the father, shall not doe Homage to his sonne, for that when a tenant hath made once homage to his Lord, hee is excused for terme of his life to make homage to any other heire of the Lord: But yet he shall doe fealty to the sonne & heire of his Lord, though that he made fealtie to his father.

Also if the Lord after the homage to him made by his tenant, graunt the seruice of his tenaunt by deed vnto another in fée, and the to-

tenant attorneth &c. the tenaunt ſhall not bee compelled to do homage, but he ſhall do fealty, though hee did fealty before to the graunton, for Fealtie is incident to euery attornement when the Lordſhip is graunted. But if a man be ſeiſed of a Mannor, and another man holdeth his land of him as of a Manor aforeſaid by homage, the which hath done homage to his Lord which is ſeiſed of the manor, if after that a ſtraunger bring a Præcipe quod reddat againſt the Lord of the manor, and recouereth the manour againſt him, and ſueth execution &c. in this caſe the tenant ſhall once againe do homage to him that recouereth the manor, for that the eſtate of him which receiueth homage before is defeated by the recouery. And it ſhall not lie in the mouth of the tenant to falſifie or defeate the recouery which was againſt his Lord. And ſo ſee the diuerſitie in this caſe, where a man commeth to his Lordſhip by recouery, and where hee commeth by diſcent, or graunt of the ſeigniorie.

And if a man tenant which ought by his tenure to doe Homage to his Lord, come to his Lord and ſay to him, Sir, I owe to doe vnto you homage for the tenements that I hold of you, and I am ready to do you homage for the ſame tenemẽts, for the which I pray you that yee will now receiue it, and if the Lord then refuſe to receiue it, then after ſuch refuſall the Lord may not diſtraine the tenant for the homage, before that the Lord require the tenant

to do homage, and the tenant refuse to doe it.

Also a man may hold his land by Homage auncestrel, & by escuage, or by other Knights seruice, aswell as hee might hold his land by homage auncestrel in Socage.

Graund Serieanty.

TEnant by Graund Serieanty is, where a man holdeth his lands or tenements of our soueraigne Lord ỹ King, by the seruice which he ought to do in his own proper person, as to beare the kings Banner or his Speare, or to lead his host, or to be his Marshall, or to beare his sword before him at his Coronation, or to be his Sewer at his Coronation, or his Caruer, or Butler, or to be one of his Chamberlaines of his receit of his Exchequer, or to do such seruices &c. And the cause whereof such seruice is called Graund Serieantie, is for that it is more honorable, & worshipfull, and digne, then is the seruice of the tenure by Escuage, for he that holdeth by Escuage, is not limitted by his tenure to doe any more especiall seruice, then any other that holdeth by Escuage ought to doe. But hee that holdeth by Graund Serieanty, ought to doe some especiall seruice to the king, that he that holdeth by Escuage ought not to doe.

Also if the tenant which holdeth by escuage die, his heire being of full age, if hee held by a knights fee, the heire shall pay but an C.s. for his

his

his relieſe, as it is ordained by the ſtatute of Magna char. cap. 2. But he that holdeth of the king by Graund ſerieanty and dieth his heire being of full age, ſhal pay vnto the king for his relieſe, the value of his lands or tenements by the yeare, beſides the charges & repriſes which he holdeth of the king by Graund ſerieantie. And it is to wit, that Serieanty in Latin is ſeruitium, and of Magna ſerieantia, is Magnum ſeruitium, that is to ſay, a great ſeruice.

Alſo thoſe which hold by Eſcuage ought to do their ſeruice out of the realme: but they that hold by Graund ſerieanty for the moſt part ought to do their ſeruice within the Realme.

And it is ſaid that in the Marches of Scotland ſome hold of the King by Cornage, that is to ſay, to blowe an horne for to warne the men of the countrey &c. when they heare that the Scots or other enemies wil come to enter into England &c. which ſeruice is Graund ſerieanty &c. But if any tenant hold of any other Lord then of the King by ſuch ſeruice of Cornage, that is not Graund ſerieanty, but it is knights ſeruice, and draweth to it warde, mariage, and relieſe, for none may holde by Graund ſerieanty, but of the king onely.

Alſo a man may ſee in the 11. yeare of Henry the 4. fol. 27. that Cokein then being chiefe Baron of the Eſchequer came into the cõmon place, bringing with him a copie of a Record in theſe wordes. Talis tenet tantam terram de domino Rege per Serieantiam ad inueniendum

vnum hominem ad guerram infra quatuor maria &c. that is to say, such a man holdeth so much land of our soueraigne Lord the King by Serieantie to find one man appointed for the warre within the fower Seas, and he demaunded whether it was Graund serieanty or Petie serieantie, and Hank. then said that it was Graund serieanty, for that it was service to be done by the body of a man, & if that he may not finde a man to do seruice for him, he must doe it himselfe: To whom the other Iustices assented, Cokaine then said, the tenant in this case shal pay reliefe to the value of the land by yeere, to the which was none answere. And note, that all they that hold of the king by Graund serieanty, hold of the king by knights seruice, & the king of that shall haue ward, mariage, & reliefe, but the king shall not haue of them Escuage, if they hold not by Escuage.

Petie Serieantie.

TEnant by Petit Serieantie is, where a man holdeth his land of our Soueraigne Lord the King, to yeeld vnto him yeerely a Bowe, a Swoorde, a Dagger, or a Knife, or a spere, or a paire of gloues of maile, or a paire of spurs gilt, or an arrow, or diuers arrowes, or to yeeld such other small thinges touching the warre, and such seruice is but Socage in effect, for that that the tenant by his tenure ought not to goe, nor to doe any thing in his owne

owne proper person touching the warre. But to yeeld and pay yeerely certaine things vnto the King, as a man ought to pay a rent.

And note, that no man holdeth land by Graund serieantie, nor by Petie serieantie, but of the King.

Burgage.

TEnure in Burgage is where an auncient Borough is, of the which the king is lord, and they that haue tenements within the borough hold of the King their tenements, that euery tenant for his tenement ought to pay to the king a certeine rent by yeere &c. And such tenure is but tenure in Socage. And the same maner is where an other Lord spirituall or tempozall is Lord of such a Borough, and the tenants of the tenements in such a Borough hold of their Lord to pay each of them yeerely an annuel rent, and it is called tenure in burgage, for that the tenements within the Borough be holden of the Lord of the Borough by certaine rent &c. And it is to wit, that the auncient Townes called Boroughes, be the most auncient & eldest Townes that be within England, for the Townes that now be Cities or Counties, in olde time were Boroughes, & called Boroughes, for of such old townes called Boroughes, came these Burgesses of the Parliament, to the parliament when the king hath summoned his parliament.

Also for the greater part of such Boroughes haue diuers customes and vsages which be not had in other townes, for some Boroughes haue such a custome, that if a man haue issue many sonnes and dyeth, the yongest sonne shal inherite all the tenements which were his fathers within the same Borough as heire vnto his father, by force of the custome, the which is called borough English.

Also in some Boroughes by the custome, the wife shal haue for her dower all the tenements which were her husbands.

Also in some Borough by the custome, a man may deuise by his Testament his landes & tenements which he hath in fée simple within the same borough at the time of his death, and by force of such deuise, he to whom such deuise is made after the death of the deuisour, may enter into the tenements to him deuised, to haue & to hold to him after the fourme and effect of the deuise without any liuerie of seisin thereof to be made to him.

Also though a man may not graunt nor giue his tenements to his wife during the couerture, for that that his wife and he be but one person in the Law, yet by such custome he may deuise by his Testament his tenements to his wife, to haue and to hold to her in fée simple, or in fée taile, or for terme of life, or yéres, for that such deuise taketh no effect, but after the death of the deuisor. And if a man at diuers times make diuers Testaments and

diuers

diuers deuises &c. yet the last deuise and will made by him, shall stand and abide.

Also by such custome a man may deuise by his Testament, that his executors may alien and sell the tenements that he hath in fee simple, for a certaine summe, to distribute for his almes: in this case though the deuisor die seised of the tenements, and the tenements discend vnto his heire, yet the executors after the death of the testatour may sell the tenements so deuised, and put out the heire, and thereof make a feoffement, alienation, & estate by deed or without deed, to them to whom the sale is made vnto.

And so may ye see a case, where a man may make a lawfull estate, and yet hee hath nought in the tenemẽts at the time of the estate made: And the cause is for that, that the custome and vsage is such, Quia consuetudo ex certa causa rationabili vsitat, probat communem Legem: For a custome vsed vpon a certaine reasonable cause, proueth the common Law.

And note well, no custome is to be allowed, but such custome as hath beene vsed by title of prescription, that is to say, from time whereof is no mind. But diuers opinions haue bin of time out of minde, and of title of prescription, which is all one in the law, for some men haue said, that the time of minde should be said for time of limitation in a writ of right, that is to say from the time of king Richard the first after the Conquest, as is giuen by the statute of

westminster the first, for that a writ of Right is the most highest writ in his nature that may be. And in such a writ a man may recouer his right of the possession of his auncestors, of the most auncient time that any man may by any writ by the law. And in so much that it is giuen by the said estatute, that in such a writ none shall be heard to aske of the seisin of his auncestors of more longer time, then of the time of King Richard aforesaide, therefore this is proued, that continuance of possession, or other customes and vsages vsed after the same time is title of prescription, and this is certaine. And other haue said, that well and trueth it is, that seysin and continuance after the limitation &c. is a title of prescription, as is aforesayd, and by the cause aforesaid. But they haue said that there is also another title of prescription that was at the Common law, before any estatute of limitation of writs &c. and that it was where a Custome or vsage, or other thing had beene vsed, for time whereof mind of man runneth not to the contrarie: And they haue said that this is proued by the pleading, where a man will pleade a title of prescription of custome &c. he shall say that such custome hath beene vsed from time whereof the memory of men runneth not to the contrary, that is as much to say, when such a matter is pleded, that no man then a liue hath heard one proofe to the contrary, nor hath no knowledge to the contrary, & in so much that

such

such title of prescription was at the Common law, and not put out by any estatute, Ergo it abideth as it was at the Common law, and the sooner, insomuch that the said limitation of a writ of Right &c. is of so long time passed. Ideo quære de hoc. And many other customes and vsages haue such ancient boroughs.

Also euery Borough is a Towne, but not the contrary. More shalbe said of Customes in the tenure of Villenage.

Villenage.

TEnure in villenage is most properly when a Villein holdeth of his Lord (to whom he is villein) certaine lands & tenemẽts after the custome of the Mannor, or els at the will of his lord, & to doe his lord villeine seruice, as to beare, bring, and carry out the dung and filth of the lord vnto the land of his lord, there to lay it, cast it, & spread it abroade vpon the land, and to doe such other manner of seruice. And some free tenants hold their tenements after the custome of certain manors by such seruice, and their tenure is called tenure in villenage, and yet they be no villeines, for no land holden by villenage, or villeine landes, or any custome rising of the land, shall euer make a free man villeine: But a villeine may make free land to be villein land vnto his Lord. As if a villeine purchase land in fee simple, or in fee taile, the lord of the villeine may enter into the land, and put out the villeine & his heires for euer,

euer, & after the Lord (if hee will) may let the same land to the villeine, to hold in villenage.

Also if a feoffement be made to a certaine person or persons in fee to the vse of a villein, or if a villeine, or any other persons be enfeoffed to the vse of a villeine, what estate soeuer the villein hath in the vse, in fee tayle, for terme of life, or yeares, the Lord of the villeine may enter in all those landes and tenements likewise as if the villeine had been alone seised of the demesne: And that is by the Statute of An. 19 H. 7. cap. 15. But if a free man will take any landes or tenements of his Lord by such villeine seruice, that is to say, to pay a fine to his Lord for his marriage, or for the marriage of his sonne or his daughter, then shall he pay such a fine for the marriage &c. for that it is the folly of such a free man, to take in such fourme landes or tenements to hold of his Lorde by such bondage, yet that maketh not the free man villeine.

Also, euery villeine, eyther he is villeine by prescription, that is to say, hee and his auncesters haue beene villeines time out of minde, or he is villeine by his owne confession in Court of Record. But if a free man haue diuers issues, and after confesseth himselfe to be villein to another in court of Record, yet his issues which he hath before the confession be free, but the issues which hee shall haue after the confession &c. shalbe villeins.

Also if a villeine purchase landes and alie-

neth

neth the same lands to an other before his lord enter, then the Lord may not enter, for it shall be iudged his owne folly that he entred not when the land was in the villeines handes. And so it is of his other goods, for if the villeine buy and sell, or giue goods to an other before that the Lord seise the goods, then the lord may not seise them: But if the Lord before any such sale or gift commeth within the house of the villein where such goods be, & there openly among the neighbors claime the same goods to be his, and so seise parcell of the same in name of seisin of all his goods &c. This is said a good seisin in the law. And the occupation that the villein hath after such claime in the goods, shal be taken in the Law, the right of the Lord. But if the King haue any villeine that purchaseth lands & alieneth before that the King enter, yet the King may enter in the land in whose hands the land commeth to: Or if the villeine buy or sell diuers goodes before that the King seise the goodes, yet the King may seise them in whose hands soeuer they be, Quia nullum tempus occurrit Regi, for no time runneth against the king.

Also if a man let land to an other for terme of life, sauing the reuersion to him, and a villeine purchaseth of the lessour the reuersion, in this case it seemeth that the Lord of the villeine may incontinent come to the land and claime the same reuersion as Lord of the same villeine, and by this clayme,

the

the reuersion is incontinent in him, for in any other forme he may not come to the reuersion, for he may not enter vpon the tenant for terme of life, and if he ought to auoide till after the death of the tenant for terme of life, then happely he might come too late, for parauenture the villeine will graunt or alien it to an other in the life of the tenant for terme of life. In the same maner it is where a villeine purchaseth the aduowson of a Church full of an incumbent, that the Lord of the villeine may come to the said Church and claime the aduowson. And by this claime the aduowson is in him, for if he abide till after the death of the incumbent, and then present his Clerke to the said Church: Then in the meane time the villeine might alien the aduowson &c. & so put out the Lord from his presentation.

Also there is a villeine regardant and a villeine in grosse. Villeine regardant is as if a man be seised of a Manour, to which a villein is regardant, and he that is seised of the said Manour, or they whose estate he hath in the same Manour haue been seised of the said villeine and of his auncesters as villeines regardant to the Manour from time out of minde. And villeine in grosse is where a man is seised of a Manour, to the which a villeine is regardant, he graunteth the same villeine by his deede vnto an other, then he is villeine in grosse, and not regardant.

Also if a man and his auncestors whose

heire

heire he is, haue bée seised of a Villeine and of his auncestors, as villeines in grosse time out of minde, such bée villeines in grosse. And note well, that of such thinges which may not bée graunted nor aliened swythout deede or fine, a man that will haue such things by prescription may not otherwise prescribe but in him, and his auncestors whose heyre he is, and not by these wordes, in him and whose estate he hath, for that, that hée may not haue their estate without déede or writing, the which behoueth to be shewed to the Court, if he will haue any aduantage of this, and because that the graunt and the alienation of a villeine lyeth not without déede or other writing: A man may not prescribe in a villeine in grosse without shewing of writing, but in himselfe that claymeth the Villeine, and in his auncestors whose heire he is. But of those thinges which bée regardant or appendant to a Manour, or to other landes or tenements, a man may prescribe that hés and they whose estate hée hath were seised of the Manour of such landes or tenementes as regardants or appendants to the Mannour, or to such landes or tenements &c. from time out of minde, and the cause is for this that such a Mannour, landes and tenements may passe by alienation swythout déede &c. And it is to wit that nothing is named regardant to a Mannour but a villeine. But certaine other thinges, as Aduowsons and

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Common of pasture &c. be named appendants to the Mannour, or to other landes and tenements.

Also if a man in Court of Record knowledge himselfe to be villeine that neuer was villeine before, such one is villeine in grosse.

Also, a man that is villeine is called villeine, and a woman that is villeine is called nieke. And a man that is outlawed is called an outlaw, and a woman that is outlawed is called a waiue.

Also if a villeine take a frée woman to wife, the issue betwéene them shall be villeine. But if a nieke take a frée man to husband, their issue shall be frée. And that is contrarie to the Law ciuill, for there he saith that partus sequitur ventrem.

Also no Bastard may be villeine, but if that hée will knowledge himselfe to be a villeine in Court of recorde, for hée is in the Law quasi nullius filius, as the sonne of no man, for that hée may be inheritour to no man.

Also euery villeine is able and frée to sue all maner of actions against euery person, except against his Lord to whom he is villeine: and yet in certaine thinges he may haue against his Lord an action, as of Appeal for the death of his father, or of his other auncesters whose heire hée is. Also a nieke which is rauished by her Lord may haue appeal of Rape against him.

Also

Also if a villeine be made executor to another, and the Lord of the villeine was indebted to the testator in a certaine summe of money, the which is not payed: In this case the villeine as executor to the testator, shall haue an action of Det against his Lord because hee shall not recouer the Det to his proper vse, but to the vse of the testator.

Also the lord may not take out of ỹ possession of such a villeine, that is executour of the deads goods, and if he do, the villeine as executour shall haue an action of Trespas against his Lord for the same goods so taken, and recouer damages to the vse of the testator. But in all these cases it behoueth the Lord (which is defendant in such actions) to make protestation that the plaintife is his villeine, or else the villeine shall be infranchised, though the matter be found for the Lord against the villeine, as it is said.

Also if a villeine sue an action of Trespas, or other action against his Lord in one shire, and the Lord sayth, that he shall not be answered, for that hee is villeine regardaunt to to his Mannour in an other Shire, and the plaintife sayth, that hée is franke and of free estate, and no villeine, this shall bee tryed in the Shire where the plaintife hath conceiued his action, and not in the Shire where the Manour is, and this is in fauour of libertie, as it is adiudged Mich. 40. Edward the third.

And

And for this cause was made a statute in the ninth yeere of Richard the second, the tenure of which ensueth in such forme.

Also for that, where many Villeins and Nieces, as well of great Lordes as of other folke spirituall & temporall, flie and goe into Cities and places franchised, as the Citie of London, and other like places, and faine diuers suites against their Lords, because they would make themselues to be infranchised, it is accorded and assented that the Lordes, nor none other shalbe foreabred of their villeines, because of their aunswere in the law. By force of which Statute, if any villeine will sue any maner of action to his owne vse in any Shire where it is hard to trie &c. against his Lord, his Lord may chuse to plead that the plaintife is his villeine, or to pleade another matter in barre, and if they bee at issue, and the issue bee found for the Lorde, then the villeine, is villeine as hee was before, by force of the same Statute: But if the issue be found for the villeine, then is the villaine franke and free, for that the Lorde tooke not for his plee, that the villaine was his villaine, but tooke it by protestation.

Also the Lorde may not Mayme his villaine, for if he Mayme his villaine, he shall of that be indicted at the Kings suite. And if he be of that attainted, he shal for that make grieuous fine and ransome to the King. But it seemeth that the villaine shall not haue by the

law

law any appeale of Maime against his Lord, for in appeale of Mayme a man shall not recouer but his damages. And if the villeine in that case recouer damages against his Lorde, and hath thereof execution, the Lord may take that that the Villeine hath in execution from the Villeine, and so the recouerie standeth vonde.

Also if the villeine be demandant in an action reall, or plaintife in an action personali against his Lord, if the Lord will plead in disability of his person, hee may not make plaine defence, but he shall defend but the wrong and the force, and demaund iudgement if hee shall be answered, and shew his matter by and by how he is villeine, and demaund iudgement if he shall be answered.

Also, sixe manner of men there bee against whom if they sue actions &c. iudgement may be asked if they shall be aunswered: One is, where the villeine sueth an action &c. against his Lord, as in case aforesaid. The second is, where a man outlawed vpon an action of Det or Trespas, or vpon any other action or Indictment, the tenant, or the defendant may shew all the matter of the recorde and the outlawrie, and demaund iudgement if hee shall be answered, because that he is out of the law to sue any action during the time that hee is outlawed. The third is, where an alien borne out of the allegeance of our soueraigne Lord the King, if such alien sue any action reall or per-

perſonall, the tenant or defendãt may ſay, that he was borne out of the kings allegeance, and aſke iudgement if he ſhall be anſwered. The fourth is, where a man by iudgement giuen againſt him vpon a writ of Præmunire facias &c. is out of the kings protection, if he ſue any action, & the tenant or defendant ſhew all the record againſt him hee may aſke iudgement if hée ſhall be anſwered, for the law & the kinges writs be the thinges by which a man is protected and holpen, and ſo during the time that a man in ſuch caſe is out of the kings protection, hee is out of the help and protection by the kings law, or by the kings writ.

The fift is, where a man is entred and profeſſed into religion, if ſuch a perſon ſue an action, the tenant or defendant may ſhew that ſuch a one is entred into Religion in ſuch a place, into the order of Saint Benet, and is there a Monke profeſſed, or in the order of friers Minors or preachers, and is there a frier profeſſed, and ſo of other orders of religion &c. and aſke iudgement if he ſhalbe anſwered, and the cauſe is this, that when a man entreth into Religion and is profeſſed, hee is dead in the Law, and his ſonne or next coſin incontinent ſhall inherite him, as well as though hée were dead indeed, & when hee entreth into Religion, he may make his teſtament & his executours, and they may haue an action of det due to him before his entre into religion, or any other action that executours may haue, if hee were dead

in

in deed, And if he make none executors when he entreth into religion, then the ordinary may commit the administration of his goodes to other as if he were dead in deede. The sixt is, where a man is accursed by the Law of holy Church, and he sueth an action reall or personall, the tenant or defendant may pleade that he that sueth is accursed, & of this it behoueth him to shewe the Bishops letters vnder his seale, witnessing the accursing, and aske iudgement if he shal be answered &c. but in this case if the demaundant or plaintife cannot deny it, the writ shal not abate, but the iudgement shal be, that the tenant or defendant shall goe quite without day, for this, that when the demaundant or plaintife hath purchased his letters of absolution, and shewed them to the Court, he may haue a Resummõs or a Reattachmẽt vpon his original after the nature of his writ &c. But in the other cases the writ shall abate &c. if the matter shewed may not be gainsaid.

Also if a villeine be made a seculer Priest, yet his Lord may seise him as his villeine, and seise his goodes &c. But it seemeth that if the villeine enter into religion and is professed &c. that the Lord may not take him nor seise him, for that hee is dead in the law. And no more then if a free man take a niece to his wife, the Lord may not take nor seise the wife of the husband: But his remedy is to haue an action agaynst the husband, for that hee tooke his niece to wife wythout his will,

and so may the lord haue an action against the Soueraigne of the house that taketh & admitteth his villein to be possessed in the same house without licence and will of his Lord &c. and shall recouer his dāmages to the value of the villeine, for he that is professed Monke &c. shal be a Monke, & as a Monke shall be taken for terme of his life naturall, except he be deraigned by the law of the holy Church, and he is holden by his religion to keepe his cloister, and if the Lord may take him out of the house, then he should not liue as a dead person, nor after his religion, which should be inconuenient &c. For if there be warden in Chiualrie of body and lands of a childe within age, if the childe when he commeth to the age of xiii. yeere enter into religion & is professed, the warden hath none other remedy, as to the ward of the body, but a writ of Rauishment of warde against the Soueraigne of the house. And if any being of full age, that is cosin and heire vnto the childe enter into the land, the warden hath no remedy as to the warde of the land, because that the entrie of the heire of the child is lawfull in such case.

Also in many other cases the Lord may make manumission and infranchising to his villeine. Manumission is properly when the Lord maketh his deed to his villein to infranchise him by this word Manumittere, which is as much to say, as extra manum, & extra potestatem alterius ponere, as to put him out

of

of the hands and the power of an other. And for this that by such a deede the villeine is put out of the hand and power of his Lord, it is called Manumission. And so euery maner of infranchising made to a villeine, may be said a manumission. Also if the Lord make to his villeine an Obligation for a certaine summe of money, or graunt vnto him by his deede an annuitie, or let him by his deede, lands or tenements for terme of yeeres, the villeine is infranchised. And if the Lord make a feoffement to his villeine of any landes or tenements by deede, or without deede, in fee simple, or fee taile, or for terme of yeeres, and deliuereth vnto him the seisin, this is an infranchising: But if the Lord make to him a lease of lands or tenements, to holde at the will of the Lord, by deede or without deede, this is no infranchising, for that he hath no maner of certaintie nor suerty of his estate, but that the Lord may put him out when hee will. Also if a Lord sue against his villeine a Præcipe quod reddat, if hee recouer or be nonsuit after apparance, this is manumission, for this that hee may lawfully enter into the land without such suit. In the same manner it is if hee sue against his villeine an action of Dette, or of Accompt, or of Couenant, or of Trespas, or such other, this is an infranchising &c. for this that he may imprison his villeine, & take his goods without such suit. But if the Lord sue his villeine by appeale of Felony, this is

none infranchising to the villeine, though the matter of the appeal is found against the lord, because that the lord may not haue the villeine hanged without such sute. But if the villeine were not indicted of the same felony before the appeal sued against him, and is acquited of the felony, so that he recouer damages against the lord for the false appeal: Then in this case the villein is infranchised, because of the indgemēt of damages that was giuen to him against his Lord. And more cases & matters there be by ꝙ which a villeine may be infranchised against his Lord, Sed de illis quęre. Also if a Lord of a Manor will prescribe that it hath bin accustomed within his manor, time out of mind, that euery tenant within the same Mannor that marrieth his daughter to any man without licence of the Lord of the manor shall make fine to the Lord for the time being, this prescription is void, for none ought to make such fines but onely villeines, for euery free man may freely marry his daughter to whom it pleaseth him and his daughter. And because that this prescription is against reason, such prescription is void. But in the shire of Kent of lands holden in Gauelkind, where by the custome vsed time out of mind the children males ought euenly to inherite, this custome is allowable, for this that it is with some reason, because that euery Sonne is as great a Gentleman as the elder sonne, and because of that more great honour and valure shall growe then if

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if hee had nothing by his auncestors, where peraduenture he might not so grow &c.

Also, where the Custome called Borough-English, in some Borough the yongest sonne shall inherite al the tenements &c. this custome also standeth with reason, because that ỹ yonger sonne if he lacke father and mother, (because of his yong age) may least of all his brethren help himselfe &c. But if a man will prescribe, that if any cattel were vpō the demeans of his manor, there doing damage, that ỹ Lord of the mannor for the time being hath vsed to distraine them, & the distres to retaine till fine were made to him for the damages at his wil, this prescription is voyd, because it is against reason, that if wrong be done to a man, that he thereof should be his owne Judge, for by such way if he had damages but to the value of an halfepenie, he might assesse & haue therefore an C.li. which should be against all reason. And so such prescription, or any other prescription vsed, if it be against all reason, this ought not, nor will not be allowed before Judges, Quia malus vsus abolendus est.

Rents.

THree manner of Rents there be, that is to say, Rent seruice, Rent charge, and Rent secke. Rent seruice is, where a man holdeth his land of his Lord by fealty & certaine rent, or by other seruice, and certaine rent, or by homage, fealtie, and certaine rent, and if rent

ſeruice at any day that it ought to be payed, be behinde, the Lorde may diſtraine for that of common right. And if a man now will giue landes or tenements to another in the tayle, yeelding to him certaine rent by the yeare, he of common right may diſtraine for the rent behinde, though that ſuch gift was made without deede, becauſe that ſuch rent is rent ſeruice: But in ſuch caſe where a man vpon ſuch a gift or leaſe, will reſerue to him rent ſeruice, it behoueth that the reuerſion of the landes & tenements be in the donor, or in the leſſor: for if a man will make a feoffement in fee, or will giue landes in the tayle, the remainder ouer in fee ſimple, without a deede, reſeruing to him certaine rent, ſuch reſeruing is voide, becauſe that no reuerſion is in the Donor, and ſuch a tenant holdeth his land immediatly of the Lord of whom his donor held. And this is by force of the ſtatute of Weſtminſter the 3. cap. 1. Quia emptores terrarum, For before the ſame eſtatute, if one made a feoffement in fee ſimple by deed or without deed, yeelding to him or to his heires certaine rent, this was rent ſeruice, and for this he might diſtraine of common right: And if he made no reſeruation of any rent, nor of any ſeruice, yet the feoffee held of the feoffor by ſuch ſeruice, as the feoffor helde ouer of his Lord next aboue. But if a man by deed indented at this day, make ſuch a gift in the tayle, the remainder ouer in fee ſe, or feoffement in fee, and by the ſame In-

denture

denture reſerueth to him and to his heires a certaine rent, and that if the rent bee behinde, that it ſhall be lawfull to him and to his heires to diſtraine &c. ſuch rent is rent charge, becauſe ſuch lands and tenements be charged of ſuch diſtreſſe by force of the writing only, and not of common right. And if ſuch a man in ſuch a deed indented, reſerue to him and to his heires certaine rent, without any ſuch clauſe ſet or put in the deed, that hee may diſtraine &c. that ſuch rent is rent ſecke, becauſe that hee cannot diſtraine to haue the rent if it be denied by the ſame diſtreſſe, and if he were neuer ſeyſed in this caſe of the rent, he is without remedie, as ſhalbe ſaid hereafter.

Alſo if a man ſeiſed of certaine land, graunt by his deed Poll, or by Indēture, a yerely rent iſſuing out of the ſame land to another in fee ſimple, or in fee tayle, or for terme of life &c. with clauſe of diſtreſſe &c. then that is rent charge, and if it be without clauſe of diſtreſſe, then it is rent ſecke. And note well, that rent ſecke. Idem eſt quod redditus ſiccus, becauſe that no diſtreſſe is incident to it.

Alſo if a man grant by his deed rent charge to another, & the rent is behinde, the grauntee may chuſe if he will ſue a writ of annuitie of it againſt the grauntor, or diſtraine for the rent behind, and the diſtreſſe to withhold till hee be of that paied: But he may not doe & haue both together, for if he take a writ of annuitie, then the land is diſcharged, and if he ſue not a writ

of

of annuity, but distraine for the arrerages, and the tenant sueth a Replegiare &c. and the grantée auoweth the taking of the distresse in the land &c. in Court of Record, then is the land charged, and the person of the grantor discharged of an action of annuity.

Also, if a man will that another shall haue a rent charge issuing out of his landes, but hee will not that his person shal be charged in any manner by a Writ of Annuity', then hee may haue such clause in the end of his deed, Prouiso semper quod præsens scriptum nec aliquid in eo specificatum, non aliqualiter se extendat ad onerandum personam meam per breue de annuali redditu, Sed tantummodo ad onerandum terram & tenementa prædicta, de annuali redditu prædict', and then is the land charged, and the person of the grantor discharged.

Also, if a man make such a deed in such maner, that if A. of B. be not yearely paid at the Feast of Christmasse for terme of life xx. s. of lawful mony, that then it shalbe lawfull to the said A. of B. to distraine for it in the manor of F. &c. this is a good rent charge, because that the manor is charged of the rent by way of distresse: and yet the person himselfe that made such a deed is discharged in this case of an action of annuity, because that he graunted not by his deed any annuity to the said A. of B. but grãted only ỹ he may distrain for his annuity.

Also, if a man haue a rent charge to him and to his heires issuing out of certaine land,

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if he purchase any parcell of the land to him and to his heires, all the rent is extinct and annulled, because that rent charge may not in such maner be apportioned, but if a man that hath rent seruice purchase parcell of the land whereof the rent is, this shall not extinct all, but for the portion, for that rent seruice in such case may be apportioned, and shall be apportioned after the value of the land: But if a tenaunt hold his land by seruice to yelde to his Lord yerely at such a feast an Hoyse, or an Hauke, or such thing semblable, if in such case the Lord purchase parcell of the land, the seruice is gone, because that such seruice may not be seuered nor apportioned: But if a man hold his land of an other by homage, fealtie, and escuage, and by certaine rent, if the Lord purchase parcell of the land &c. in that the rent shall be apportioned as is aforesaid, but yet in this case the homage and fealty abideth whole to the Lord, for the Lord shall haue the homage and fealtie of his tenant for the remnant of landes and tenements holden of him as he had before &c. for this that such seruices be no annuell seruices, and may not be apportioned: But the escuage may and shall be apportioned after the quantitie and rate of the land.

Also if a man haue a rent charge, and his father purchaseth parcell of the tenements charged in the fee, and dyeth, & that parcell discendeth to his son that hath the rent charge, now this

this rent charge shal be apporcioned after the value of the land, as is aforesaid of rent seruice, because that such a porcion of the land purchased by the father, commeth not to the sonne by his owne deede, but by discent and course of the Law.

Also if there be Lord and tenant, and the tenant holdeth of his Lord by fealty and certein rent, and the Lord graunteth the rent by his deede to an other &c. reseruing to him the fealtie, and the tenant attourneth to the grantee of the rent, now such rent is rent secke to the grantee, for this that the tenements be not holden of the grauntee of the rent, but he holden of the Lord that reserued to him fealtie. And in the same maner it is where a man holdeth his land by homage, fealtie, and certeine rent, if the Lord grant the rent, sauing to him the homage, such rent after such grant is rent secke. But where landes or tenements bén holden by homage, fealtie, and certeine rent, if the Lord will graunt the homage of his land by his deed to an other, sauing to him the remnant of the seruices, and the tenant attourneth to him after the forme of the graunt, now in this case the tenant holdeth his land of the grantee: and the Lord that graunteth the homage, shal not haue but the rent as rent secke, and shall neuer distraine for the rent: for this, that neither homage, nor fealtie, nor escuage may be said secke, for hee that hath or ought to haue of his tenant homage, or fealtie, and

escuage,

escuage, may of common right distraine for it if it be behind, for homage, fealtie, and escuage been services by which lands and tenements be holden, and been such that in maner may be taken but as services. But otherwise it is of rent that was once rent seruice, for this, that when it is seuered &c. by the grant of the Lord from the other seruices, it may not be said rent seruice, for this that it hath not to it Fealty which is incident to euery maner of rent seruice, and for this it is said rent secke.

Also if a man let land to an other for terme of life, reseruing to him certaine rent, if he graunt the rent to an other, sauing to him the reuersion of the land so letten by his deede &c. such rent is but rent secke, for this that the graunteé hath nothing in the reuersion of the land. But if he grant the reuersion of the land to an other for terme of life, and the tenant attourneth &c. then hath the graunteé the rent as rent seruice, because he hath the reuersion for terme of life. And so it is to be vnderstood that if a man giue landes or tenements in the taile, reseruing to him and to his heires certaine rent, or let land for terme of life, reseruing certaine rent, if he graunt the reuersion to an other, and the tenant attourneth, all the rent and seruice passeth by the worde of the graunt of reuersion, for this that all the rent and seruice in such case bee incidents to the reuersion, and passe by the grant of reuersion. But though he graunt the rent to an other,

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the reuerſion paſſeth not by ſuch graunt &c. And ſo note well the diuerſitie. And ſo it is holden Paſchæ 12.E.4.f.3. But it is adiudged An.26.lib.aſſ.pl.38.39. whereas the ſeruices of the tenant in taile were graunted, that that was a good graunt, yet notwithſtanding the reuerſion remaines.

Alſo if there be Lord, meſne, and tenant, and the tenant holdeth of the meſne by the rent of fiue ſhillinges, and the meſne holdeth ouer by xij. pence, if the Lord aboue purchaſe the tenancy in fee, then the ſeruice of the meſnalty is extinct, for this, that when the Lord aboue hath the tenancy, he holdeth of the Lord next aboue him. And if he ought to hold it of him that was meſne, then he ſhould hold one ſelfe tenancy immediatly of diuers Lordes which ſhould be inconuenient, and the law will ſooner ſuffer a miſchiefe then an inconuenience, and for this the ſeigniory of the meſnalty is extinct. But in ſo much that the tenant helde of the meſne by fiue ſhillinges, and the meſne helde but by xij. pence, ſo that he had more aduantage by iiij. ſhillinges then he paied to his Lord, he ſhall haue the ſaid foure ſhillinges as rent ſecke yeerely of the Lord that purchaſed the tenancy.

Alſo if a man that hath Rent ſecke, is once ſeiſed of any parcell of the rent, and after if the tenaunt will not pay the rent that is behinde, this is his remedy: It behoueth him to goe by himſelfe, or by an other,

to

to the lands and tenements, whereof the rent is issuing, and there to demaund the arrerages of the rent. And if the tenant deny to pay it, this denying is a disseisin of the rent. Also, if the tenant at the time be not readie to pay it, this is a denying and a disseisin. Also, if the tenaunt nor none other be dwelling vpon the lands or tenements when hee asketh the arrerages &c. this is a denying in law, and a disseisin in deede, and of such disseisins hee may haue an action of Nouel disseisin against the tenant & recouer the seisin of the rent, and the arrerages, and his damages and costes of his writ and of his plee &c. And if after such recouery the rent be another time denyed him, then he shall haue a Redisseisin, and recouer double damages.

And it is to be had in mind, that this name Assise is Equiuocum, for sometime it is taken for a Jury, for in the beginning of the record of Assise of Nouel disseisin, the record shall begin thus, (Assisa venit recogn) which is to say, that Iuratores ven recogn, and the cause is for this, that by the writ of Assise is commanded to the Shirife, Quod faciat xij. liberos & legales homines de vicineto &c. videre tentum illud, & nomina eorum imbreuiari, & quod summon eos per bonos summon quod sint coram Iusticiarijs &c. parati inde facere recognitionem &c. And for this, that by force of such an originall writ, a Panell by force of the same writ ought to be returned &c. It is

sith

ſaid in the beginning of the Recorde in Aſſiſe, Aſſiſa venit recogn &c. Alſo in a writ of right it is commonly ſaid, that the tenant may put him in God and in the great Aſſiſe &c. Alſo there is a writ in the Regiſter called, De magna Aſſiſa eligenda, ſo is this a good proofe that this name Aſſiſe is ſometime put for the Jurie, and ſometime it is taken for all the writ of Aſſiſe, and after that intent it is moſt properly and moſt commonly taken, as Aſſiſe of Nouel diſſeiſin, is taken for all the writ of Aſſiſe of Nouel diſſeiſin. In the ſame maner Aſſiſe of common of paſture, is taken for all the writ of aſſiſe of common of paſture, and aſſiſe of Mortdaunceſter, and aſſiſe of Darraine preſentment &c. But it ſeemeth that the cauſe why ſuch writs at the beginning were called Aſſiſes, is for this, that by euery ſuch writ it is commanded to the Shirife, that he ſummon xij. &c. which is as much to ſay, that he ought to ſummon a Jurie &c. and ſometime Aſſiſe is taken for an ordinance, for to ſet certaine things in a certaine rule and diſpoſition, as an ordinance that is entred in the auncient eſtatutes is called Aſſiſa panis & Seruiciæ.

Alſo if there bee Lord & tenant, & the Lord graunteth the rent of his tenant by deede to an other, ſauing to him the other ſeruices, and the tenant attourneth, that is a rent ſecke, as it is aforeſaid: But if the rent be denyed him at the next day of payment, hée hath no remedie, for this, that he had not thereof any poſſeſſion,

But

But if the tenant when hee attourneth to the grauntee, or after, will giue a pennie, or a halfe penne to the grauntee in name of seisin of rēt, then if after at the next day of paimēt the rent be denyed him, he shal haue an Assise of Nouel disseisin. And so it is, if a man graunt by his deed a yeerely rent issuing out of his land to another &c. if the grauntor then after pay to the grauntee a penie, or an halfe penie, in the name of seisin of the rent, then if after the first day of payment the rent be denyed, the grauntee may haue an assise, or els not.

Also of rent secke a man may haue an assise of Mortdaunceſter, or a writ of Ayel or Cosinage, & all other maner of actions reals, as the case iyeth, as he may haue of any other rent,

Also there be three causes of disseisin of rent seruice, that is to say: Rescous, Repleuin, and Encloſure. Rescous is, when the Lorde distraineth in the lād holden of him for his rent behind, if the distresse be rescued from him, or the Lord come vpon the land, and would distrain, and the tenant or another man will not suffer him &c. Repleuin is, when the Lorde hath distrained, and Repleuin is made of the distresse, by writ, or by plaint &c. Encloſure, is if the lands and tenements be so encloſed, that the Lord may not come within the land and tenements for to distrain. And the cause why such thinges so done be disseisins made to the Lord, is for this that by such things the Lord is disturbed of ꝯ meane by which he ought to

haue come to his rent. And foure causes be of disseisin of rent charge: that is to say, rescous, replevin, enclosure, and denier, for denying is a disseisin of rent charge, as it is aforesaid of rent seck. And two causes be of disseisin of rēt seck: that is to say, enclosure, and denyer. And yet it seemeth that there is another cause of disseisin of all the three rents aforesaid, that is, when the Lord is going to the land holden of him for to distraine for the rent being behinde, the tenant hearing this encountreth him, and forestalleth him the way with force & armes, and manasseth him in such forme, that he dare not come to the land to distraine for his rent behinde &c. for doubt of death, or bodily hurt, this is a disseisin, for this, that the Lord is disturbed of the meane wherby he ought to come to his rent. And so it is if by such forestalling & manassing, hee that hath rent charge or rent seck is forestalled, or dare not come to the land to aske the rent behinde.

The third Booke.

Parceners.

PArceners be in two manners: that is to say, Parceners after the course of the Common Law, and Parceners after the custome. Parceners after the course of the Common Law, be where a man or woman is seised of certaine lands or tenements in fée simple, or fée tayle, and hath none issue but daugh-

daughters and dieth, & the tenements discend to the daughters, and the daughters enter into the lands & tenements so to them discended, then they be called parceners, and be but one heire to their auncestor, and they be called parceners, for this, that by the writ that is called Breue de participatione facienda, the law will constraine them that participation shall bee made among them, & if there be ij. daughters to whom the land discendeth, then they be called two parceners, and if they be 3. daughters they be called 3. parceners, and 4. daughters 4. parceners, and so forth. And if a man seised of lands in fee simple, or fee taile, die without issue of his body, & the tenemẽts discend to his sisters, they be parceners as is aforesaid. In the same maner it is, where he hath no sisters but the land discendeth to his Aunts, they be parceners. But if a man hath but one daughter, she may not be said parcener, but daughter and heire. And it is to wit, that partition betweene parceners may be made in diuers maners: One is when they agree to make partition, & make partition of the tenements, as if there be 2. parceners to deuide betweẽ thẽ the tenement in ij. parts, euery part by himselfe in seueralty of euen value, & if there be 3. parceners to deuide the tenements in 3. parts in seueralty. In other partition there is to choose by agreement betweene them & certein of their friends to make the partition betweẽ them of the lands & tenements in the forme aforesaid.

And in such cases after such partitions the eldest daughter shall chose first one of the parts so deuided, which shee will haue for her part. And then the second daughter after her an other part &c. if it so be that there be many sisters &c. If it be not that they be otherwise agréed betweéne them, for it may be agréed betweéne them that one of them shall haue such tenements, and an other such tenements &c. without any such first election, and the part that the elder sister hath, is called in Latine Enitia pars. But if the parceners agrée that the elder sister shal make partition of the tenements in the forme aforesaid, & if shée do, then it is said that the eldest sister shal chose the last part after each of her other sisters. An other partition and allotting there is, as if there be iiij. parceners, and after such partition made of the lands, euery part of the land is by it self written in a litle scrowle & it is couered all in waxe in a maner of a little ball, so that no man may sée the scrowle, then are the fower balles of waxe put in a Bonet to keepe in the hands of an indifferent man, & then the elder daughter first shall put her hand in the bonet which shall take a ball of waxe, & the scrowle within the same ball for her purparty. And then the second sister shall put her hand in the Bonet and shall take an other. And so then the third sister the third ball &c. and in this case it behoueth each of them to hold them to their chance and allotment.

Also

Also an other partition there is, as if there be fower parceners, and they will not agree that partition shal be made betweene them, then one of them may haue a writ de Participatione facienda against the other three sisters, or two may haue a writ of Participatione facienda against the other, or they three against ỹ fourth at their election, and when iudgement shall be giuen vpon such a writ, the iudgement shal be such, that partition shall be made betweene the parties, and the Shirife in his proper person shall goe to the landes and tenements &c. and there he by the oath of xij. true men of his bayliwike &c. shall make partition betweene the parties, the one part of the same lands shall be assigned to the plaintife, or to one of the plaintifes, and an other part to an other &c. not making mention in the iudgement of the eldest sister more then of the yongest, and of the partition that he hath thus done, he shal make notice to the Justices &c. vnder his seale and the seales of the xij. &c. And so in this case may you see that the elder sister shall not haue the first election &c. but the Shirife shall assigne the part that she shall haue &c. and it may be that the Shirife will assigne the first part to the yonger sister, & the last part to the elder.

And note well, partition by agreement betweene Parceners may by the Law be made among them aswell by word without deede, as by deede.

Also, if two meales discend to two parceners

ceners, and the one meaſe is worth by yere xx.s. & the other but x.s. by yeere, in this caſe partition may be made betweene them in ſuch forme, that the one parcener ſhall haue the one meaſe, and the other parcener ſhall haue the other meaſe, and ſhee that ſhall haue the meaſe of xx.s. and her heires ſhall pay a yeerely rent of v.s. iſſuing out of the ſame meaſe to the other parcener and to her heires for euer, becauſe that euery of them ſhal haue euen in value, & ſuch partition made, is good enough, and the ſame parcener that ſhall haue the rent of v.s. and her heires may diſtraine for the rent of common right in the ſame meaſe of the value of xx.s. if the rent of v.s. be behind at any time in whoſe hands ſoeuer the ſame meaſe commeth, though there was neuer writing made of it betweene them. In the ſame maner it is of partition of all maner of landes and tenements &c. where ſuch rent is reſerued to one, or to diuers parceners vpon ſuch partition &c. but ſuch rent is not rent ſeruice, but rent charge, of common right had and reſerued for egalty of the partition. And note well that none be called Parceners by the Common Law, but women or the heires of women, and which come by landes and tenements by diſcent, for if ſiſters purchaſe lands or tenements, of this they be called Iointenants and not Parceners. Alſo if two parceners of land in fee ſimple make partition betweene them &c. and the part of the one

valueth

valueth much more then the part of the other, if they were at the time of partition of ful age, that is to say, of 21. yéeres, then they alway shall abide and neuer bee defeated: But if the tenements whereof partition is made, bee to them in fée taile, and the part that the one hath is much better in yéerely value then the part of the other, howbeit that they bee excluded during their liues to defeate the partition, yet if the parcener that hath the lesser part in value hath issue and dyeth, the issue may disagrée to the partition, and enter, & occupie in common that other part that is allotted to her Aunt, & so the Aunt may enter and occupie in common the other part allotted to her sister, as if no partition thereof had bin made &c.

Also, if two parceners of tenements in fée take husbands, and they and their husbandes make partition betweéne them, if the part of the one be lesse in yerely value then the part of the other during the liues of the husbands the partition shalbe in his force and strength: yet after the death of the husband the wife that hath ꝑ lesse part may enter in her sisters part, as it is aforesaid, & defeate the partition: But if the partition so made betweéne them were such, that euery part at the time of allotment were egall of yéerely value, then it may not after be defeated in such cases.

Also, if there be two parceners, & the younger of them be within the age of xxj. yéeres, & partition is made betweéne them, so that the

part that is allotted to the younger, is lesse in value then the part of the other: In this case the yonger during the time of her nonage, and also when she cõmeth to full age of xxj. yeres, may enter in the porcion to her sister allotted, &c. and defeat the partition: But such a parcener ought to take heede when shee commeth to full age, that she ne take to her owne vse, all the profits of the tenements to her allotted, for by that she agreeth to the partitiõ at such age, in which case the partition shall stand and abide in his force and strength &c. but peraduenture the profits of the halfe shee may take, leauing the profits of the other halfe, to her sister &c. It is to wit, that when it is saide males and females be of full age, that shall be vnderstode of the age of 21. yeres: for if any feoffement or graunt, release, confirmation, obligation, or any other writing before anie such age bee made by any of them &c. or that any within such age bee Bailife or Receiuer with any man &c. all serueth for nought & may be auoyded. Also a man before such age shall not be sworne in no Iurie, nor no inquisition.

Also if tenements be giuen to a man in the taile, which hath as much land in fee simple, and hath issue two daughters and dyeth, and the daughters make partition betweene them, so that the lands in fee simple be allotted to the younger daughter, in allowance of the tenements tayled, allotted to the elder daughter, if after such partition the younger daughter

alieneth the land in fée simple to another in fée, and hath issue a sonne or a daughter, and dieth, the issue may enter in the tenements tailed, and thē hold in purparty with their Aunt, and this is for two causes: One is for that, that the issue may haue no remedy of the land alienedby his mother, for that the land was to her in fee simple, and in so much as he is one of the heires in the tayle, and hath nothing recompenced of that, that to him belongeth of the tenements tailed, it is reason that he haue his purparty of the land in taile and namely when such partition maketh no discontinuance of the taile, as shalbe said hereafter in the chapter of Discontinuance. But the contrary is holden M. 20 H. 6. fol. 13. that is to say, that they may not enter vpon the parcener that hath the land tailed, but is put to his suite by writ of Formedon. An other cause is, for that it shall be counted the folly of the elder sister, that shee would agree to the partition, where she might haue had halfe the land in fée simple, and halfe of the tenements in the taile for purparty, and so to be sure without damage &c.

Also if a man seyled in a plough land by iust title, disseiseth an infant within age of another plough land, & hath issue two daughters, and dieth seised of both those plough lands, the Infant then being within age, & the daughters enter & make partition, & the one plough land is allotted for the purparty of the one, as percase to the yōger sister in allowance of ꝑ other

plough

plough land which is allotted to the purpartie of the other, so that after the infant entreth in the plough land of the which he was disseised vpon the possession of the parcener that hath the same plough land, then the same parcener may enter into the other plough land that her sister hath, and holdeth in parcenary with her. But if the yonger sister alien the same plough land to another in fée simple before the Entry of the Infant, and after the childe entreth vpon the possession of the alienée, then she may not enter into the other plough land, for this that by her alienation shee hath vtterly dismissed her selfe to haue any part of the tenements as parcener: But if the younger Sister before the entrie of the Infant make thereof a Lease for terme of yéeres, or for terme of life, or in fée tayle, sauing the reuersion to her, and after the childe entreth, there paraduenture it is otherwise, for this, that shee dismisseth not her selfe of all that, that was in her, but hath reserued to her the reuersion and the fée simple &c.

Also, if there be three or foure parceners that make partition betweene them, if the part of the one parcener be defeated by such lawfull entry, shee may enter and occupie the other landes of all the other parceners, and compell them to make new partition of the other lands betweene them &c.

Also, if there be two parceners, and the one taketh a husband, and the husband and

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the wife haue issue betweén them, and the wife dieth, and the husband holdeth him in the halfe as tenant by the curtesy: In this case the parcener that survyueth, and the tenant by the curtesie may well make partition betweén thē &c. And if the tenant by curtesie will not agree to make partition, then the parcener that survyueth may haue a writ de Participatione facienda &c. and compel him to make partition. But if the tenāt by the curtesie will haue partition betweene them, & the parcener that survyueth will not haue it, then the tenant by the curtesie shal haue no remedy for to haue partition, for he may not haue a writ de Participatione facienda, for this that he is not parcener, for such a writ lyeth for Parceners onely. And so may ye see that the writ de Participatione facienda lieth against tenāts by the curtesie, & yet himselfe may not haue such a writ.

Parceners by the Custome.

PArceners by the Custome bée where a man seised in fee taile of the lands or tenements that be of the tenure called Gauelkind within the Shire of Kent, & hath issue diuers sonnes and dyeth, such landes and tenements shall discend to all the sonnes by the custome, and they euenly shall inherite and make partition betweén them by the custome as females doe, and a writ de Participatione facienda lyeth in this case as betweene females, but it

it behoueth in the declaration to make mention of the custome. Also such custome is in other places in England. And also such custome is in North wales.

Also there is an other partition that is of an other nature, and in an other fourme then any of the partitions aforesaid: As a man seised of certaine landes in fée simple hath issue two daughters, and the elder is maried, and the father giueth parcell of the same landes to the husband with his daughter in franke mariage, and dyeth seised of the remnant, the which remnant is of more greater value by yéere then bée the lands giuen in franke mariage. In this case the husband and the wife shall haue nothing for their part of the said remnant: But if they will put in their lands giuen in franke mariage in hotchpot with the remnant of the land with her sister, and if they will not doe so, then the yonger sister may occupie the same remnant, and take to her the profites onely. And it séemeth that this worde Hotchpot is in English a pudding, for in such a pudding is commonly put not one onely thing, but one thing with an other, and for this it behoueth in such case to put the landes giuen in Franke mariage with the other landes in hotchpot if the husband and the wife will haue any thing in the other remnant &c. This word Hotchpot is but a terme of similitude, and is as much to say, as to put the landes giuen in frank mariage

age, and other lands in fée simple &c. together, and this is to such intent to accompt the value of all the lands, that is to say, of the lands giuen in frankmariage, and the remnant that was not giuen, and then partition shall be made in this fourme that ensueth. As put case that a man is seised of xxx. acres of land in fée simple, euery acre in value xij. pence by the yéere, which hath issue two daughters, and the one is couert baron, and the father giueth x. acres of the xxx. acres to the husband with his daughter in frankmariage and dyeth seised of the remnant, then the other sister shall enter into the remnant, that is to say, in the xx. acres, and shall occupy it to her owne vse, except the husband and the wife will put their x. acres giuen to them in franke mariage with the other xx. acres in hotchpot, that is to say, together, and then when the value is knowen of euery acre, that is to say, euery acre is yerely worth xij.d. then the partition shall be made in such forme, that is to say, that the husband & the wife shall haue aboue the x. acres giuen to them in frank mariage v. acres in seueralty of the xx. acres, and the other sister shall haue the remnant, that is xv. acres of the xx. acres for her part, so that accompting the x. acres that the husband and the wife had in frankemariage, and the other fiue acres of the xx. acres, the husband and the wife haue asmuch in yerely value as the other sister hath, and so alwayes vpon such partition the landes giuen

giuen in frankmariage, abide to the donors or to the heires &c. after the forme of the gift &c. For if the other parcener should haue nothing of this that is giuen in frankmariage, of this should follow an inconuenience, and a thing against reason, which the law will not suffer &c. and the cause why that landes giuen in frankmariage shall be put in hotchpot is this, that when a man giueth lands & tenements in frankmariage with his daughter, or with his other cosin, it is to be vnderstood by the law that such gift made by such wordes frankmariage is an aduancement of his daughter or of his cosin, and namely when the donour and his heires shall not haue any rent or seruice of him, except fealty vntill the fourth degree be passed &c.

And for such cause the law is that he shall haue nothing of the other lands & tenements discended to the other parceners &c. if shee will not put the tenements giuen in frankmariage in hotchpot, as is aforesaid, and if shee will not put the lands giuen in frankmariage in hotchpot, then he shall haue nothing in the remnant, for this that it shall be vnderstood by the law, that shee is sufficiently aduanced, to which aduancement shee agreeth & holdeth her selfe contented.

The same Law is betweene the heires of the donees in frankmarriage and the parceners &c. if the donees in frankmarriage die before their auncestors, or before such par-

tition

tition &c. as to put in Hotchpot &c.

And note well, that gift in frankemarriage was by the Common Lawe, before the Statute of westminster the second, and alway after, so hath beene vsed and continued and so forth.

Also such putting in Hotchpot &c. is where lands or tenements that were giuen in frankmarriage discended frō the donor in frankmariage onely, for if the landes discend to the daughters by the father of the donor, or by the mother of the donor, or by the brother of the donor, or other auncesters, and not by the donor &c. there it is otherwise, for in such case shee to whom such gift in frankemarriage is made, shall haue her part as if no such gift in frankemarriage had beene made, for this, that shee was not aduanced by him &c. but by another.

Also, if a man seised of xxx. acres of lande, euery acre of euen yeerely value, hauing issue two daughters, as is aforesaid, and giueth of this to the husband of the daughter xv. acres in frankmarriage, and dyeth seysed of the other xv. acres, in this case that other sister shal haue the fifteene acres so discended to her onely, and the husband and the wife shall not put in such case the fifteene acres to him giuen in frankemariage in Hotchpot &c. for this that the tenements giuen to him in frankmarriage be of as good yeerely value as the other landes discended &c.

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For if the landes giuen in franke marriage were of as euen value as the remnaunt, or of more value, then in vaine and to none intent such landes giuen in franke mariage shall be put in hotchpot &c. for this that she may haue nothing of the other landes discended &c. For if she should haue any parcell of the other lāds discended, then should she haue more in yerely value then her sister &c. which the Law will not &c. And as it is said in the cases aforesaid, of two daughters, or two parceners, in the same maner, and in like cases is, where there be moe sisters, alwer that as the case and the matters be &c. And it is to wit, that lands and tenements giuen in franke marriage, shall not be put in hotchpot, but with the landes discended in fée simple, for of landes discended in fée tayle, partition shall be made as if no such gift in franke marriage had beene made. Also no lands shall be put in hotchpot with other, but landes that be giuen in franke mariage onely. For if any womā haue any other lands or tenements by any other gift in the tayle, she shall neuer put such landes so giuen in hotchpot &c. but shée shall haue the part of the remnant, discended &c. that is as much as the other parcener shall haue of the same remnant.

Also another partition may bee made betweene parceners, that varieth from the partitions aforesaid: As if there bée three parceners, & the yongest would haue partition, and the other two would not, but will hold in parcena-

cenary that, that to them belongeth without partition: In this case if one part be allotted in seuerality to the yonger sister after that that she ought to haue, then the other may hold the remnant in parcenary, and occupy in common without partition, if they will, and such partition is good enough. And if after the elder and middle parcener will make partition betweene them of that that they held, they may well doe so when they please. But where partition shal be made by force of a writ de participatione faciendâ &c. there otherwise it is, for there it behoueth that euery parcener haue his part in seuerality &c. More shall be said of Parceners in the Chapter of Iointenants, and also in the Chapter of Tenants in common.

Iointenants.

IOintenants be as a man seised of certaine lands or tenements &c. and thereof hath infeoffed, two, or three, or foure, or more, to haue and to hold to them and to their heires, or to haue and to holde to them for terme of their lines, or for terme of anothers life, by force of which feoffement they be seised, such be Iointenants.

Also if two or three disseise another of anie landes or tenements to their owne vse, then the disseisours be Iointenants: But if they disseise another, to the vse of one of them, then be they no Iointenants, but hee to whom the

vse of the disseisin is made, is sole tenant, and the other haue nothing in the tenancy, but be called coadiutors to the disseisin &c.

And note well, that disseisin is properly where a man entreth into any landes or tenements where his entry is not lawfull, & putteth him out that hath the franketenement &c. And it is to wit that the nature of iointenancy is, that he that suruiueth shall haue only the whole tenancy, after such estate as hee hath if the iointure be continued &c. As if three iointenants be in fee simple, & the one hath issue & dieth, yet they that suruiue shall haue the tenements whole, and the issue shall haue nothing, and if the second iointenant haue issue and die, yet the third that suruiueth shall haue the tenements whole, and shall haue them in fee simple to him and to his heires. But otherwise it is of parceners, for if three parceners be, and before any partition the one hath issue and dieth, that that to her belongeth shall discend to her issue, and if such a parcener die without issue, then that that to her belongeth shall discend to her heires, so that they shall haue this by discent, and not by the suruiuor as Iointenants haue &c. And as the suruiuor holdeth place among Iointenants &c. in the same manner it holdeth place among them that haue ioint estate or possession with others of chattels reall, or chattels personall. As if a lease of landes or tenements be made to many for term of yeres, hee that suruiueth of the lessees shall haue the tene-

tenements whole to him during the terme by force of the same leaſe. And if any horſe, or other chattell perſonal be giuen to many mo, he that ſuruiueth ſhall haue them to himſelfe.

In the ſame maner it is of dets & duties &c. For if an Obligation be made to many for one dutie, he that ſuruiueth ſhall haue all the det, and ſo it is of all other couenants & contracts.

Alſo ſome iointenāts may be that may haue ioint eſtates, and be iointenants for terme of their liues, and yet they haue ſeuerall inheritances: As if lands be giuen to two men, & to the heires of their two bodies ingendred: In this caſe the donées haue ioint eſtate for terme of their two liues, and they haue ſeuerall inheritance: For if the one of the donées haue iſſue and die, the other that ſuruiueth ſhall haue all by the ſuruiuor for terme of his life. And if he that ſuruiueth hath alſo iſſue and die, then the iſſue of the one ſhall haue the halfe of the land, and the iſſue of the other ſhall haue the other halfe of the land, and they ſhall hold the land betweene them in common, and be not iointenants, but tenants in common. And the cauſe that ſuch donées in ſuch caſes haue iointe eſtate for terme of their liues, is this, for this that at the beginning landes were giuen to them two, which words without more saying, made a ioint eſtate to them for terme of their liues. For if a man will let lād to another by deede, or without deede, not making mention what eſtate he hath, and of this maketh

liuery of seisin: In this case the lesse shall haue estate for terme of his life, and so in so much that the lands were giuen to them, they haue a ioint estate for terme of their lines. And the cause why they haue seueral inheritance is this, insomuch that they cannot by possibility haue an heire betweene them ingendred as a man and a woman may haue &c. then the law will that their estate and their inheritance shal be such, as reason will, after the forme & effect of the wordes of the gift, and that is to the heires that the one ingendreth of his body by any of his wiues, and the heires that the other ingendreth of his body by any of his wiues &c. So it behoueth by necessitie of reason, that they shall haue seuerall inheritances. And in such case, if the issue of one of the donees after the death of the donees die, so that he hath no issue aliue of his body ingendred, then the donour or his heires may enter in the halfe as in his reuersion, though the other of the donees hath issue aliue &c. And the cause is, for so much as the inheritance is seuered &c. the reuersion in the law is seuered &c. and the suruiuour of the issues of the other shall holde no place to haue the whole. And so as it is said of males, in the same maner it is where land is giuen to two females, and to the heires of their two bodies begotten.

Also if landes be giuen to two females, and to the heires of one of them, this is a good iointure, and the one hath a freehold, and the other

other hath fee simple, & if shee that hath the fee die, shee that hath the freehold shall haue the whole by the suruiuor for terme of life. In the same maner it is where tenements be giuen to two, & to the heires of the body of one of them ingendred, the one hath freehold, and the other fee taile. Also if two Iointenants be seised of estate of fee simple, and the one granteth a rent charge by his deed to an other out of that that to him belongeth &c. In this case during the life of the grantor, the rent charge is effectual. But after his decease the rent charge is void as to charge the land, for that he that hath the land by the suruiuor, shall hold all the land discharged. And the cause is for this, that he that suruiueth claimeth to haue the land by the suruiuor &c. and not by discent of his fellow &c. But otherwise it is of Parceners, for if there be two parceners of tenements in fee simple, and before any partition the one chargeth that that to him belongeth by his deed, with a rent charge &c. and dieth without issue, & that that to him belongeth, discendeth to the other parcener, In this case the other parcener shall hold the land charged &c. for this that he commeth to the halfe by discent as heire &c.

Also if there be two Iointenants in fee simple within one Borough where the lands and tenements within the same Borough be deuisable by Testament, if the one of the said Iointenants deuise that, that to him belongeth by testament &c. and die, this deuise is

void. And the cause is this, that no deuise may take effect but after the death of the deuisor. And for this that by his death all the land incontinent commeth by the law to his fellow that suruiueth, by the suruiuor, which neither claimeth nor hath any thing in the land by the deuise, but in his owne right by the suruiuor after the course of the Law &c. for this cause such deuise is void.

But otherwise it is of Parceners seised of tenements deuisable in such case of deuise &c. Causa qua supra.

Also it is commonly said, that euery Iointenant is seised of the land that he holdeth iointly &c. throughout and by all. And this is as much to say that he is seised by euery parcel, & by all &c. and this is true, for in euery parcel, & by each parcell, & by all the lands & tenements he is iointly seised with his fellowes &c.

And if two Iointenants be seised of certaine lands in fée simple, and the one letteth that, that to him belongeth to a straunger for terme of xl. yéeres and dyeth within the terme: In this case after his decease the lessée may enter and occupy the halfe to him letten during the terme &c. though the lessée neuer had possession of it in the life of ꝯ lessor, by force of this lease &c. And the diuersitie betweéne the case of the grant of a rent charge and this case is this, for in the graunt of a rent charge by a iointenant the tenants abide alway as they were before, without that, that any hath any right to haue

parcell

parcell of the tenements but himselfe, and the tenements abide in such plight as they were before the charge &c. But where a Lease is made by a Iointenant to an other for terme of yeeres &c. incontinent by force of the Lease the lessee hath right in the same land, that is to say of all that, that to his lessor belonged, & to haue that by force of the same lease during his terme &c. and this is the diuersity &c.

Also Iointenants if they will may make partition betweene them, and the partition is good enough, but they shall not be compelled by the law to doe it, but if they will make partition of their proper will and agreement, the partition shall stand in his strength. P. 3. E. 4. See Sta. 31. H. 8. cap. 21, & 32. H. 8. cap. 32.

Also, if a ioint estate be made of land to the husband and the wife, and to a third person, in this case the husband and the wife haue not in the Law in their right but the halfe &c. And the third person shall haue as much as the husband and the wife haue, that is to say, the other halfe &c. And the cause is, for that the husband and the wife be but one person in the law, & be in like case as if the estate be made to two iointenants, where each one hath by force of the iointure the one halfe, and the other the other halfe. In the same maner it is, where an estate is made to the husband and the wife, and to other two men, in this case the husband and the wife haue not but the third part, and the other two men the other two parts &c. Causa

qua supra. More shalbe said of them touching Jointenancy, in the Chapter of Tenants in Common.

Tenants in Common.

TEnants in Common bee they, that haue lands and tenements in fee simple, fee taile, or for terme of life &c. which haue such landes and tenements by seuerall title, and not ioynt title, & none of them knoweth that, that is seuerall to him. But they ought by the law to occupie such lands and tenements in common & vndeuided to take the profits in common. And because that they come to such lands and tenements by seuerall titles, & not by one seise ioint title, and their occupation & possession shall bee by the law among them in common, therefore they be called Tenants in Common: as if a man enfeoffe two Jointenants in fee, and one of them alieneth that that to him belongeth to another in fee, now the other Jointenant and the alienee be tenants in common, for this that they be seised in such tenements by seuerall titles, for the alienee commeth to the halfe by the feffement of the one iointenant, & the other iointenant hath the other halfe by force of the first feffement made to him and to his first fellow, and so they be in by seuerall titles, and by seuerall feoffements &c. And it is to wit, that when it is said in any booke, that a man is seised in fee, without more saying it shall be vn-

vnderstood fée simple, for it shall not be vnderstood by such word in fée, that a man is seised in fée tayle, except that there be put therto such addition, that is to say, fée tayle.

Also if three Jointenants be, and the one of them alieneth that, that to him belongeth to an other in fée: In this case the aliené is tenant in common with the other two Jointenants. But yet the other two Jointenants be seysed of the two parts ioyntly, and of those two parts the survivour betwéene them holdeth place &c.

Also if there be two Jointenants in fée, and the one giueth that, that vnto him belongeth to another in the taile, the doné and the other iointenants be tenants in common &c. But if the landes be giuen to two men, and to the heires of their two bodies ingendred, the doneés haue ioint estate for terme of their liues, and if each of them haue issue and die, their issues shall hold in common &c. But if landes be giuen to two Abbots, as to the Abbot of Westminster, and to the Abbot of Saint Albons, to haue and to hold to them and to their successors, in this case they haue incontinent at the beginning estate in common, and not ioynt estate: And the cause is for this, that euery Abbot, or other Soueraigne of an house of Religion before that hee be made Abbot or Soueraigne, was but a dead man in the law. And when he is made Abbot, he is as a man personable in the law, all onely to purchase,

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and to haue landes and tenements, and other things to the vse of his house, & not to his own proper vse, as other seculer men may. And for this in the beginning of their purchase, they be tenants in common. And if the one of them die, the Abbot that suruiueth shall not haue all by the suruiuor, but the successor of the Abbot that dieth shall hold the halfe in common with the Abbot that suruiueth &.

Also if lands be giuen to an Abbot and to a seculer man, to haue & to hold to them, that is to say, to the Abbot and his successors, and to the seculer man, to him and to his heires, they haue estate in common, Causa qua supra.

Also if lands be giuen to two men, to haue and to hold, the one halfe to the one and to his heires, and the other halfe to the other and to his heires, they be tenants in common &c.

Also if a man seised of certaine landes enfeoffeth another in the halfe of the same land, without any speech of assignement or limitation of the same halfe in seueraltie at the time of the feoffement, then the feoffée and the feoffor shall hold the parts of the land in cõmon. And in the same maner as is aforesaid of tenants in common of lands or tenements in fée simple or in fée tayle, in the same maner may it be said of tenants for terme of life. As if two Jointenants be in fée, & the one letteth to a man that, that vnto him belongeth for terme of life, & the other Jointenant letteth that, that to him belongeth to an other for terme of life, these two

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lessées be tenants in common for terme of their liues &c.

Also if a man let lands to ij. men for terme of their lines, & the one granteth all his estate of that that vnto him belongeth to an other &c. then the other tenant for terme of life, & he to whom the grant is made be tenants in cõmon during the time that both lessées be aliue.

And it is to be remembred, that in all other such cases, though that they bée not here expressly named or specified, if they be in like reason, they be in like law.

Also if there be two Iointenants in fée, and the one letteth that, that vnto him belongeth to an other for terme of life, the tenãt for terme of life during his life, and the other iointenant that did not let be tenants in cõmon. And vpon this case a question may rise, as this: Put the case that the lessor hath issue and dieth, lyuing the other iointenant his fellow, and lyuing the tenant for terme of life, the question may be such, if the reuersion of the halfe &c. that the lessor hath, shall discend to the issue of the lessor, or that the other iointenant shall haue it by the suruiuor. And some haue said in this case, that the other iointenant shal haue the reuersion by the suruiuor, & their reason is such, when the iointenants were iointly seised in fée simple &c. though the one of them made estate of that, that vnto him belongeth for terme of life, and though that hée hath seuered the franktenement of that, that to him belongeth

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by the leale, yet hée hath not seuered the fée simple, but the fée simple abideth to him iointly as it was before. And so it seemeth vnto them that the other iointenant that suruiueth, shall haue the reuersion by the suruiuour &c. And other haue said the contrarie, and this is their reason, when one of the Iointenants letteth this that to him belongeth to an other for term of his life, that by such leale the franktenement is seuered from the iointure: And by the same reason the reuersion that is dependant vpon the same franktenement, is seuered from the iointure. Also if the lessor had reserued to him a yéerely rent vpon the leale, the lessour onely should haue had the rent &c. The which is a proofe that the reuersion is onely to him, and that the other hath nothing in the reuersion &c. And if the Tenaunt for terme of life were impleaded &c. and made default after default, then the lessour shall be onely of this receiued to defend his right, and his fellow in this case in no manner shall be receyued: which proueth that the reuersion of the halfe is onely in the lessour. And so by consequence if the lessour die, lyuing the lessee for terme of life, the reuersion shall discend to the heires of the lessour &c. and not come to the other Iointenaunt by the suruiuour, Ideo Quære. But in this case if the Iointenant that hath the franktenement haue issue and die, lyuing the lessour & the lessée, then it seemeth that the issue shall haue the halfe in his demesne as of

fée

fée by diſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne as of fée, and none ſhall haue any iointure in his franktenement, Ergo this ſhall diſcend to his iſſue, Sed quære. But if it be thus that the law in this caſe is ſuch, that if the leſſor die liuing the leſſée, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall diſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſuruiuor by right of the iointure, annulled and all vtterly defeated for euer.

In the ſame maner it is if the Iointenant that hath the franktenement die, liuing the leſſor and the leſſée, if the law be ſuch that his franktenement and fée that he hath in the halfe ſhall diſcend to his iſſue, then the iointure ſhal be defeated for euer &c.

Alſo if three Iointenants be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the landes by force of the releaſe, and he & his fellow ſhall hold the other two parts iointly, And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall be in vre to

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by the leaſe, yet hée hath not ſeuered the fée ſimple, but the fée ſimple abideth to him iointly as it was before. And ſo it ſéemeth vnto them that the other iointenant that ſuruiueth, ſhall haue the reuerſion by the ſuruiuour &c. And other haue ſaid the contrarie, and this is their reaſon, when one of the Iointenants letteth this that to him belongeth to an other for terme of his life, that by ſuch leaſe the franktenement is ſeuered from the iointure: And by the ſame reaſon the reuerſion that is dependant vpon the ſame franktenement, is ſeuered from the iointure. Alſo if the leſſor had reſerued to him a yéerely rent vpon the leaſe, the leſſour onely ſhould haue had the rent &c. The which is a proofe that the reuerſion is onely to him, and that the other hath nothing in the reuerſion &c. And if the Tenaunt for terme of life were impleaded &c. and made default after default, then the leſſour ſhall be onely of this receiued to defend his right, and his fellow in this caſe in no manner ſhall be receyued: which proueth that the reuerſion of the halfe is onely in the leſſour. And ſo by conſequence if the leſſour die, lyuing the leſſée for terme of life, the reuerſion ſhall diſcend to the heires of the leſſour &c. and not come to the other Iointenaunt by the ſuruiuour, Ideo Quære. But in this caſe if the Iointenant that hath the franktenement haue iſſue and die, lyuing the leſſour & the leſſée, then it ſéemeth that the iſſue ſhall haue the halfe in his demeſne as of

fée

fée by diſcent, for this that the franktenement may not by nature of the iointure be annexed to a reuerſion. And it is certaine, that he that did not let was ſeiſed of the halfe in his demeſne as of fée, and none ſhall haue any iointure in his franktenement, Ergo this ſhall diſcend to his iſſue, Sed quære. But if it be thus that the law in this caſe is ſuch, that if the leſſor die liuing the leſſée, and liuing the other iointenant that hath the franktenement of the other halfe, that the reuerſion ſhall diſcend to the iſſue of the leſſor, then is the iointure and the title that any of them may haue by the ſuruiuor by right of the iointure, adnulled and all vtterly defeated for euer.

In the ſame maner it is if the Iointenant that hath the franktenement die, liuing the leſſor and the leſſée, if the law be ſuch that his franktenement and fée that he hath in the halfe ſhall diſcend to his iſſue, then the iointure ſhal be defeated for euer &c.

Alſo if three Iointenants be, and the one releaſeth by his deed to one of his fellowes, all the right that he hath in the land, then hath he to whom the releaſe is made, the third part of the landes by force of the releaſe, and he & his fellow ſhall hold the other two parts iointly, And as to the third part that he hath by force of the releaſe, he holdeth the third part with himſelfe and his fellow in common.

And it is to wit, that ſometime a deede of releaſe ſhall take effect, and ſhall be in vre to

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put the estate of him that made the release, to him to whom the release is made, as in the case aforesaid.

And also if a ioint estate bee made to the husband and his wife, and to a third person, and the third person releaseth his right that he hath &c. to the husband, then hath the husband the halfe that the third person had, and the wife of this hath nothing. And if in such case the third release &c. to the wyfe, not naming the husband in the release, then hath the wife the halfe that the third person had: and the husband hath nothing of this, but in right of his wife, for this that in such case the release shall inure to put the estate to him to whom the release is made, of all that that belongeth to him that made the release. And in some case a release shall inure to put all the right that hee hath that made the release, to him to whom the release is made. As if a man seised of certaine landes and tenements, is disseised by two disseisors, if the disseisee by his deed release all his right &c. to one of the disseisours, then hee to whom the release is made, shall haue and holde all the tenements to him onely, and put his fellow out of euery occupation of it: and the cause is, for this, that the two disseisours were seised in the tenements by wrong of them done against the Law. And when one by them hath the release of him that had right to enter &c. this right in such case resteth in him to whom the re-

releas is made, and in such plight, as if he that had the right had entred and enfeoffed him &c. And the cause is for this, that hee that before had an estate by wrong, that is to say, by disseisin, now by the release hath a rightfull estate.

And in some case a releas shal enure by way of extinguishment, and in such case such release shall help the iointenant to whom the release is not made, aswell as to him to whom the release is made. As if a man be disseised, and the disseisor maketh a feffement to two men in fee, if the disseisee release to one of the feffees in fee by his deed, then such release shal enure to both the feffees, for this, that the feffees haue estate by the Law, that is to say, by the feoffement, and not by any wrong done to any other.

And in the same manner it is, if the disseisor make a release to a man for terme of life, the remainder ouer to an other in fee, if the disseisee release to the tenant for terme of life, all his right &c. this release enureth aswell to him in the remainder, as to the tenant for terme of life &c. And the cause is for this, that the tenāt for terme of life cōmeth to his estate by the course of the law, and for this the release shall enure and take effect by way of extinguishmēt of the right of him that hath released &c. And by this releas the tenāt for terme of life hath no greater estate then hee had before the release made vnto him, and the right of him that released is all vttetly extinct. And in so much that such re-

releaſe cannot inlarge the eſtate of the tenant for terme of life, it is reaſon that the releaſe ſhall enure to him in the remainder &c. More ſhall be ſaid of the Releaſes, in the Chapter of Releaſes.

Alſo if there be two parceners, and the one alieneth that, that vnto him belongeth to another, then the other parceners and the aliene be tenants in common.

Alſo tenants in common may be by title of preſcription, if the one and his auncеſtors, or they whoſe eſtate hee hath in the halfe, haue holden in common, the ſame halfe with the other tenant that hath the other halfe, and with his auncеſtors, of them whoſe eſtate hee hath as vndeuided, from time whereof no memorie runneth. And diuers other matters may make and cauſe men to be tenants in common that bee not here expreſſed.

Alſo in ſome caſe tenants in common ought to haue of their poſſeſſion ſeuerall actions, and in ſome caſes they ſhal ioine in one action. For if there be two tenants in common, and they be diſſeiſed, they ought to haue againſt the diſſeiſor two Aſſiſes, & not one Aſſiſe, for euerie of them ought to haue an Aſſiſe of his halfe &c. and the cauſe is for this, that tenants in common were ſeiſed by ſeuerall titles: But otherwiſe it is of Jointenāts, for if there be twentie Jointenants, & they be diſſeiſed, they ſhall haue in all their names but one aſſiſe, becauſe that they had but one ioint title.

Alſo

Also if there be three Jointenants, and one releaseth to one of his fellowes all the right that he hath, and after the other two be disseised of the whole &c. in this case the other shall haue seuerall Assises in this forme, that is to say, they shall haue in both their names one Assise of the two partes &c. for this that they held the two partes iointly at the time of the disseisin: And as to the third part, he to whom the release was made, ought to haue thereof an Assise in his owne name, for this, that as to the third part hee is tenant in Common &c. for this, that he came to the third part by force of the release, and not onely by force of the iointure.

Also, as to sue actions that touch the realty, there is diuersity betweene parceners that be in by diuers discents, and tenants in common. For if a man seised of certaine landes in fee haue issue two daughters, and die, and they enter &c. and each of them hath issue a sonne & dyeth without partition made betweene them, by which the one halfe discendeth to the sonne of the one parcener, and the other halfe discendeth to the sonne of the other parcener, & they enter and occupy in common, and be disseised: in this case they shall haue in their two names one Assise, and not two Assises: and the cause is, that though they come in by diuers discents &c. yet they be parceners, and a writte de participatione faciendâ lyeth betweên them, and they be not Parceners hauing regard of re-

respect onely to the seisin and possession from their mothers, but they be parceners having more respect to their estate that discended from their graundfather to their mothers: For they may not be parceners, where their mothers were not parceners before &c. And so to such respect and consideration, that is to wit, as to the first discent, that was to their mothers, they haue a title in parcenarie, the which maketh them parceners: And also they be but as one heire to their common auncestor, that is to say, to their graundfather, from whom the the land discended to their mothers: And for these caules before partition between them &c, they should haue one assise, though they come in by seuerall discents &c.

Also, if there be two tenants in common of certaine lands in fée, and they giue the same land to another man in the tayle, or let it to another man for terme of life, yeelding an annuitie, or certaine rent, and a pound of Pepper, or an Hauke, or an Horse, and they been seised of these seruices, and after all the rent is behind, and they distraine for it, and the tenant maketh rescous: In that case as to the rent and the pound of Pepper, they shall haue two assises: and as to the Hauke and the Horse but one assise. And the cause why they haue two assises as to the rent and pound of Pepper is this, inasmuch that they were Tenants in common by seuerall titles, and when they made a gift in the tayle, or lease for terme

of

of life &c. saying to them the reuersion, and yeelding to them certeine rent &c. Such reseruation is incident to their reuersion.

And for this that their reuersion is in common, and by seuerall titles, as their possession was before, the rent, and other thinges that may be seuered and were to them reserued vpon the gift, or vpon the lease, which be incident by the law to the reuersion, such thinges so seuered were of the nature of the reuersion, which reuersion is to them in common by seuerall titles.

And it behoueth that the rent of the pound of Pepper which may be seuered be to them in common by seuerall titles. And of this they shall haue two Assises, and euery of them in his assise shall make his plaint of the halfe of the rent, and of the halfe of the pound of Pepper &c.

But of the Hauke & the Horse which cannot be seuered, they shall haue but one Assise, for a man may not make a plaint in assise of the halfe of an Hauke, or the halfe of an Horse &c. In the same maner it is of other rents and seruices that tenants in cõmon haue in grosse by diuers titles.

Also, as to actions personels, tenants in common ought to haue such actions personels iointly in all their names, that is to say, of Trespasse, or of offences that touch their tenementes in common: as of breaking of their houses, breaking of their closes and

pastures, wasting & defouling of their grasse, cutting of their wood, & to fish in their ponds, and such other: In this case tenants in common shall haue one action iointly and recouer iointly damages, because that the action is in the personalty and not in the realty.

Also, if two tenants in common make a lease of their two tenements to an other for terme of yeeres, yeelding vnto them yeerely a certaine rent, if the rent be behind &c. the tenants shall haue one action of Debt against the lessee, and not diuers actions, for that the action is in the personalty.

Also tenants in common may make partition betweene them if they will, though they shall not be compelled by the Law. But if they make partition betweene them by their agreement and assent, such partition is good enough, as it is adiudged in the booke of Assises P. 3 E. 4.

Also as there be tenants in cõmon of lands or tenements &c. as is aforesaid: In the same maner there be tenãts in common of chattels reall, and chattels personall. As if a lease be made of certaine lands to two men for terme of xx. yeeres, & when they be thereof possessed, the one of the lessees granteth that, that vnto him belongeth before, of the terme to an other, then he to whom the graunt is made, and the other shall hold and occupie in common.

Also, if two Ioyntenants haue the ward of the body and of the landes of a childe within age,

age, and the one of them graunteth to an other that, that vnto him belongeth of the same ward, then the grauntee & the other that graunteth not, shall haue & hold it in common &c.

In the same maner it is of chattels personals: As if two haue a ioint estate by gift or by buying of an Horse, or an Oxe &c. the one of them graunteth that, that to him belongeth of the same Horse or Oxe &c. Then the grauntee and he that graunteth not, shall haue & possesse such chattel personall in common &c. And in such cases where diuers persons haue chattels reals or personals in common, and by diuers titles, and one of them die, the other that suruiueth, shall not haue that by the suruiuor. But the executours of him that dyeth shall hold and occupy that with him that suruiueth, as their testatour did or ought in his life &c. for this that their titles and right in this case were seuerall.

Also, in this case aforesaid, if two haue estate in common for terme of yeres, & the one occupy all and put the other out of his possession and occupation: Then shall he that is put out of occupation, haue against the other a writ de Ejectione firmæ for the halfe against the other. In the same maner it is where two holde the warde of landes or tenements during the nonage of a childe, if one put out the other of his possession, he that is out, shal haue a writ of Ejectment de garde of the halfe, for this that those thinges bee chattels reals,

and may be apportioned and seuered &c. But no such action of trespas, that is to say, Quare clausum suum fregit, & herbam suam conculcauit & consumpsit &c. And such like actions the one may not haue against the other, for this that each of them may enter and occupie in common &c. throughout and by all the tenements which they holde in common. But if two be possessed of chattels personals in common by diuers titles, as of an horse, or an oxe, or a cow, if the one take it all to himselfe out of the possession of the other, the other hath none other remedy but to take this of him that hath done to him the wrong for to occupy in common when he may see his time.

In the same maner it is of chattels reall that may not be seuered, as the case aforesaid: Two be possessioners of a ward of the body of a child within age, if one take the childe out of the possession of the other, the other hath no remedy by any action by the Law, but to take the child out of the others possession when he seeth his time &c.

Also, when a man in pleading will shewe a deed of feoffement made vnto him, or a gift in the taile, or a lease for terme of life of any lands or tenements, there he shall say by force of which feoffement, gift, or lease, he was seised &c. But where a man will plead a lease or grant made vnto him of a chattell reall or personall, there he shall say, by force of which he was possessed.

More

More ſhall be ſaid of Tenants in common in the Chapter of Releaſes, and Confirmations.

Eſtates vpon Condition.

ESTates that men haue in landes or tenements be in two manners: that is to ſay, they haue eſtate vpon condition in deede, or vpon condition in law. Vpon condition in deed, is as a man by deed indented infeoffeth an other in fee, reſeruing to him and to his heires yerely a certaine rent, payable at one feaſt, or at diuers feaſts by the yere, vpon condition, that if the rent be behinde &c. that it ſhall be lawfull to the feoffor and to his heires to enter into the lands or tenements &c. Or if the land be alened to an other in fee, to yeeld vnto him certaine rent &c. And if it hap that the rent be behinde by a weeke after any day of payment of it, or by a Moneth, or by a haife yere after any day of payment, that then it ſhall be lawfull to the feoffour and to his heires to enter &c. In this caſe, if the rent be not payed at ſuch a day, or before ſuch a time limitted and ſpecified within the Condition compriſed in the Indenture, then may the feoffour or his heires enter into ſuch landes or tenements, and them in his firſt eſtate to haue and to hold, and of this to put the feoffee cleane out: And it is called Eſtate vpon condition, for this, that the

eſtate of the feoffee is defeaſible, if the condition be not perfourmed.

In the ſame manner it is if landes be giuen in the taile, or let for terme of life, or for terme of yeeres, vpon ſuch condition &c. But where a feoffement is made of certaine landes, reſeruing certaine rent vpō ſuch condition, that if the rent be behind, that it ſhall be lawfull to the feoffor and his heires to enter, and the land to hold till they be ſatiſfied or payed of their rent behind &c. In this caſe if the rent be behinde, and the feoffor and his heires enter, the feoffee is not excluded cleane out, but the feoffor ſhall haue and hold the land, and take the profites till that hee be ſatiſfied of the rent behinde &c. And when hee is ſatiſfied, the feoffee may reenter in the ſame land, and hold it as hee did before, for in ſuch caſe the feoffor ſhall haue it but in maner for a diſtreſſe, in the meane time til he be ſatiſfied of the rent &c. though he take the profits in the meane time.

Alſo, diuers wordes among other there be, that by vertue of them ſelfe make eſtate vpon condition: One is, this word of Condition, as A. enfeoffeth B. of certaine land, to haue and to hold to the ſame B. and to his heires vpon Condition, that the ſame B. and his heires ſhall pay, or doe to be payed to the foreſaid A. and to his heires yeerely ſuch rent &c. In theſe caſes without any more ſaying the feoffee hath eſtate vpon condition. Alſo if the Condition were ſuch. Prouided alway, that

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the aforesaid B. pay, or doe to be paide to the aforesaid A. such rent: Or if they were thus, so that the foresaid B. pay, or doe to be payed such rent. In these cases without any more saying, the feoffee hath estate but vpon condition, so that if hee performe not the condition, the feoffor and his heires may enter &c.

Also, other wordes there be in a deede that causeth the tenements to be conditionals, as vpon such a feoffement a rent is reserued to the feoffor &c. and after it is put in the deede, that if it chance the aforesaid rent to be behinde in part or in all &c. that then it shall be lawfull to the feoffor and to his heires to enter, and this is a deed vpon Condition. But there is diuersitie betweene the wordes (if it chaunce) &c. and the wordes next aforesayd, for this word (if it chaunce) &c. is nought worth to such condition: But if it hath these wordes following, that is to say: that it shall be lawfull to the feoffour and to his heires to enter &c. But in these cases aforesaid, it needeth not by the law to put such clause, that is to say, that the feoffor and his heires may enter &c. for this, that they may so doe by force of the wordes aforesaid, because they contayne in themselues in the Law a Condition, that is to say: That the feoffor and his heires may enter. Yet it is common in all such cases aforesaid, to put such clauses in the deedes, that is to say: if the rent be behinde &c. that it shall be lawfull to the same feoffour and his

heires

heires to enter &c. And this is well done to that intent for to declare and expreſſe to the lay men that be not learned in the Lawe, the manner and the condition of the feoffement &c. As a man ſeiſed of land as of franktenement, let the ſame land to an other by deed indented for terme of yeeres, peelding vnto him certaine rent, it is vſed to be put in the deed, that if the rent be behinde at the day of payment, by a Moneth &c. that then it ſhall be lawfull to the leſſor to diſtraine &c. and yet the leſſor may diſtraine of common right for the rent behinde &c. though ſuch wordes neuer were ſet in the deed &c.

Alſo, if a feoffement be made vpon ſuch condition, that if the feoffour pay at a certayne day &c. twentie pound of money, that then the feoffour may enter &c. In this caſe the feoffee is called tenant in Mortgage, that is as much to ſay in French, as Mortgage, and in Latin Mortuum vadium, and in Engliſh, a dead pledge. And it ſeemeth that the cauſe why it is called Mortgage, is that it ſtandeth in doubt if the feoffour will pay at the day limitted, ſuch a ſumme or not: And if hee pay not, then the land that is put in pledge vpon condition for the payment of the money, is gone from him for euer, and ſo dead as to the tenant &c.

Alſo, as a man may make a feoffement in fee in Mortgage, ſo may a man make a gift of the tayle in Mortgage, and a leaſe for terme

of

of lyfe, or for terme of yéeres in Mortgage. And all ſuch tenants bée tenants in Mortgage after the ſtate that they haue in the lands &c.

Alſo, if a Feoffement be made in Mortgage, vpon condition that the feoffour ſhall pay ſuch a ſumme at ſuch a day &c. as is betweéns them by their déede indented accorded and limitted, though the feoffour die before the day of payment &c. yet if the heire of the feoffour pay the ſumme within the day to the feoffée, or profer him the money, and the feoffée refuſeth to receiue it, then may the heire enter into the lands &c. And yet the condition is, if the feoffor pay ſuch a ſumme at ſuch a day &c. and not making mention in the condition of any payment to bée made by his heire, but for this that the heire hath intereſt of right in the condition &c. And the intent was but that the money ſhould be payed at ſuch a day ſet &c. and the feoffée hath no more damage to be payed by the heire, then though he were payed by the father &c. for this cauſe if the heyre paye the money, or tendreth the money at the day ſet &c. and the other refuſeth it, he may well enter. But if a ſtraunger of his owne head that hath no intereſt &c. would tender and pay the money at the day ſet, then the feoffée is not bound to receyue it &c.

Alſo, it is to be had in minde, that in ſuch caſe where ſuch lawfull tender of the money is

is made, and the feoffee refuseth to receiue it, wherefore the feoffor or his heires do enter &c. then the feoffee hath no remedy to haue the money by the common Lawe, for this that it shal be counted his owne folly that he refused the money when lawfull proffer was made of it vnto him &c.

Also, if a feoffement be made with such condition, that if the feoffee pay to the feoffour at such a day betweene them limitted &c. li. that then the feoffee shall haue the land to him and to his heires, and if he faile to pay the money at the day &c. that then it shal be lawfull to the feoffor, or to his heires to enter &c. And if after, before the day set, the feoffee selleth the land to an other, and thereof make a feoffement vnto him, in this case if the second feoffee will tender the summe of money at the day set to the feoffour, and the feoffour refuseth it &c. then hath the second feoffee estate in the land cleerely without condition: And the cause is, for that the second feoffee had interest in the condition for saluation of his tenancy. And in this case it seemeth that if the first feoffee after such sale of land will tender the money at the day set &c. to the feoffour, that shall be good ynough for the saluation of the estate of the second feoffee: for this, that the first feoffee was priuie to the condition, and so the tender of any of them is good ynough &c.

Also if the feffemẽt be made vpon condition, that if the feffor pay a certain summe of money

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to the feoffee: that then it ſhal be lawfull to the feoffor and to his heires to enter &c. In this caſe if the feoffor die before the day of paiment, and the heire will tender to the feoffor the money, ſuch tender is voide: for this that the time within which the tender ought to be made, is paſt. For when the condition is, that if the feoffor pay the money to the feoffee, this is as much to ſay, that if the feoffor during his life pay the money to the feoffee &c. And when the feoffor dyeth, then the time of the tender is paſt. But otherwiſe it is where day of payment is limitted, and the feoffor dyeth before the day, then may the heire tender the money, as is aforeſaid, for this that the time of the tender was not paſt by the death of the feoffor. Alſo it ſeemeth in ſuch caſe where the feoffor dyeth before the day of payment, if the executors of the feoffor tender the money to the feoffee at the day of payment, the tender is good enough. And if the feoffee refuſe this, the heires of the feoffor may enter &c. And the cauſe is for this, that the executors repreſent the perſon of their teſtator &c.

And note well, that in all ſuch caſes of condition of payment of certaine ſumme in groſſe, touching lands or tenements, if lawfull tender be once refuſed, he that ought to pay the mony is therof quited & clearely diſcharged for euer.

Alſo, if the feoffee in mortgage before the day of payment that ſhall be made vnto him make his executors & die, and his heire enter into the land

land as he ought. It ſéemeth in this caſe that the feoffor ought to pay the money at the day ſet to the executors, and not to the heire of the feoffée, for this, that the money at the beginning belonged to the feoffée in maner as a dutie. And it ſhall be vnderſtood that the eſtate was made becauſe of borowing of the money of the feoffee, or becauſe of an other dutie, & for this the payment ſhall not be made to the heire of the feoffée as it ſéemeth. But the words of the condition may be ſuch, that the payment ſhal be made vnto the heire, as if the condition were that the feoffor pay to the feoffée, or to his heires, ſuch a ſumme at ſuch a day &c. There after the death of the feoffée (if he die before the day limitted) then the payment ought to be made to the heire at the day ſet &c.

Alſo in ſuch caſe of a feoffement in Mortgage, a queſtion hath bin demaunded in what place the feoffor is bound to tender the money to the feoffée at the day ſet &c. And ſome haue ſaid, that vpō the land ſo holden in Mortgage for this that the condition is dependant vpon the land, and they haue ſaid, that if the feoffor be ready vpon the land to pay the money at the feaſt or day ſet, and the feoffée be not at that time there, that then the feffor is excluded and diſcharged of payment of the money, for this, that no default was in him. But it ſéemeth to ſome men that the law is contrary, and the default is in him: for hee is bound to ſéeke the feoffée if he be then at that time in any maner

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of place within the Realme of England. As if a man be bound in an Obligation of xx. li. vpon condition indorced vpon the Obligation, that if he pay to him to whom the Obligation is made, at ſuch a day ten pound, that then the Obligation of xx. li. ſhall loſe his force, & ſhall be holden for nought: In this caſe it behoueth him that made the Obligation to ſéeke him to whom the Obligation is made, if hée be within England, and at the day ſet, to tender him the ſaid x. li. &c. Or otherwiſe hée forfaiteth the ſumme of xx. li. compriſed within the Obligation, and ſo it ſéemeth in the other caſe &c. And though that ſome haue ſaid that the condition is dependant vpon the land, yet this is not prooued that the feſance of the condition to be performed, ought to be made vpon the land &c. No more then if the condition were, that if the feoffor ſhould do at ſuch a day &c. an eſpeciall corporall ſeruice to the feoffée, not naming the place where the corporall ſeruice ſhould be done: In this caſe the feoffor ought to do ſuch corporall ſeruice at the day limitted to the feoffée, in whatſoeuer place in England that the feoffée be, if hée will haue aduantage of the condition &c. And ſo it ſéemeth in that other caſe. And it ſéemeth to them, that it ſhall be more properly ſaid, that the eſtate of the lād is dependant vpon the Condition &c. then to ſay, that the Condition is dependant vpon the land: But inquire &c.

But if a feoffement in fée be made reſer-

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uing to the feoffor an annuell rent, and for default of payment a reentrie &c. in this caſe it needeth not to the tenaunt to tender the rent when it is behinde, but onely vpon the land, for this, that this is a rent going out of the land, which is rent ſecke. For if the feoffor be once ſeiſed of his rent, and after hee commeth vpon the land &c. and the rent is denyed him &c. he may haue an Aſſiſe de Nouel diſſeiſin, for though hee may enter becauſe of the condition broken, yet he may chuſe, that is to ſay, to enter, or to haue an aſſiſe. And ſo is there diuerſitie, as to the tender of the rent that is going out of the land, & of tender of another ſumme in groſſe, which is not going out of any land. And therefore it ſhall be ſure and a good thing for them that will make ſuch Feoffement in Mortgage, to put & ſet a ſpeciall place where the money ſhall be paid. And the more ſpeciall that it is put, the better it is for the feoffor. As if A. enfeoffe B. to haue to him and to his heires vpon ſuch condition, that if A. pay to B. in the feaſt of Saint Michael the Archangell next comming, in the Cathedrall Church of S. Paul of London, within foure howres next before the houre of none of ỹ ſame feaſt, at the rode loft of the North dore within the ſame Church, or any other certain place within the ſame Church: that then it ſhalbe lawful to the foreſaid A. and to his heires to enter &c. In ſuch caſe he needeth not to ſeeke the feoffee in any other place, but in the place compriſed

in the Indenture, nor to be there more longer time then the time specified in the same Indenture, for to render or pay the money to the feoffee.

Also in such case where the place of paiment is limitted, the feoffee is not bound to receiue the payment in none other place, but in the place so limitted: But yet if he receiue the payment in any other place, that is good enough, and as strong for the feoffor, as if the receit had bin in the place so limitted &c.

Also in this case of feffement in Mortgage, if the feoffor pay the feoffee an horse, or a cup of siluer, or a ring of gold, or any other such thing in full satisfaction of the money, and the other this receiueth, this is good enough, & as strong as if he had receiued the summe of money, though the horse, or any of the other things be not the twentieth part worth in value of the summe of money, for this, that the other hath accepted it in plaine & full satisfaction.

Also if a man enfeoffe an other in fee vpon condition, that hee and his heires shall yeild to a stranger and his heires a yerely rent of xx.s. and if he and his heires faile of payment of this, that then it shall be lawfull to the feoffor and to his heires to enter, this is a good condition: And yet in this case, though such a yerely rent be called an annuell rent, this is not properly a rent, for if it shalbe rent it ought to be rent seruice, rent charge, or rent seeke, and it is none of them, for if the stranger were

were ſeiſed of this, and after it were to him de-nyed, he ſhall neuer haue an Aſſiſe of this, for this that it iſſueth not out of any landes, and ſo the ſtraunger hath no remedy, if any ſuch yeerely payment be behinde in this caſe, but that the feoffour and his heires may enter &c. and yet if the feoffour and his heires enter for default of payment, then ſuch rent is gone for euer. And ſo ſuch rent is but a payment ſet to the tenant and to his heires, that if they will not pay this after the forme of the Indenture, that they ſhal leeſe their land by the entry of the feoffor or his heires, for default of payment. And in this caſe it ſeemeth that the feoffee and his heires ought to ſeeke the ſtranger and his heires if they be in England, becauſe that no place is limitted where the payment ſhall be made, and becauſe that ſuch rent is not going out of any land &c.

And here note well two things, one is that no rẽt that is properly ſaid rent, may be reſerued vpon any feoffement, gift, or leaſe, but only to the feoffor or to the leſſour, or to their heirs, & in no manner may be reſerued to any ſtranger perſon. But if two iointenaunts make a leaſe by deede indented, reſeruing to the one a certaine yeerely rent, that is good enough to him to whom the rent is reſerued, for this that he is priuie to the leaſe and not a ſtraunger to this &c. The ſecond thing is, that no entry or reentry (which is all one) may be reſerued nor giuen to any perſon, but onely to the feoffour

or to the donour, or the leſſor, or to their heires, and ſuch entrie may not be alienèd nor graunted to any perſon. For if a man let land to an other for terme of life by Indenture, yeelding to the leſſor & to his heires certaine rent, & for default of paiment a reentrie &c. if after the leſſor by a deed grant the reuerſion of the land to an other in fee, and the tenant for terme of life attourneth &c. if the rent after be behind, the grantee of the reuerſion may diſtraine for the rent, for this that the rent is incident to the reuerſion, but he may not enter into the land and put out the tenant as the leſſour might, or his heires, if the reuerſion had bèn continued in them &c. And in this caſe the entrie is taken away at all times, for the grantee of the reuerſion may not enter, Cauſa qua ſupra. See Stat. 32.H.8.c.34. if the Leaſe be by deede indented. And the leſſour nor his heires may not enter, for if the leſſour may enter, then he ought to be in his firſt eſtate &c. & that may not be, for this that he hath put from him the reuerſion &c.

Alſo if there be Lord & tenant, & the tenant make ſuch a leaſe for terme of life, yeelding to the leſſour and to his heires, ſuch yeerely rent, and for default of paiment a reentrie &c. if after the leſſour die without heire, during the eſtate of the tenant for terme of life, by which the reuerſion commeth to the Lord by way of Eſcheate, and after the rent of the tenãt for terme of life is behind, the Lord may diſtraine the tenant for the rent behind, but hee may not

enter into the land by force of the condition &c. for this that he is not heire to the feoffor &c.

Alſo if land be graunted to a man for terme of yeeres vpon condition, that if he pay to the grauntor within ij. yeeres xl. Markes, that then he ſhal haue the lād to him & to his heires &c. In this caſe if the grantee enter by force of the graunt, and after he payeth to the grantor xl. Markes within the ij. yeeres, yet he hath nothing in the land, but for terme of ij. yeeres, for this that no liuery of ſeiſin was to him made at the beginning, for if he had had franktenement and fee in this caſe, becauſe he hath performed the condition, then ſhould he haue franktenemēt by force of the firſt grant where no liuery of ſeiſin was made thereof, which ſhould be againſt reaſon &c. But if the grauntor had made liuery of ſeiſin to the graunte by force of the graunt, then hath the graunte the franktenement and the fee vpon the performance of the ſame condition.

Alſo, if lands be granted to a man for terme of fiue yeres, vpon condition that he pay to the grauntor within the firſt ij. yeeres xl. markes, that then he ſhall haue fee, or elſe but for terme of v. yeres, & liuery of ſeiſin is made to him by force of the graunt: Now he hath a fee ſimple conditionel &c. and if in this caſe the graunte pay not to the grauntor the xl. markes within the ſame ij. firſt yeeres, then immediatly after the ſame ij. yeeres the fee & the franktenement is and ſhall be adiudged to the grātor, for this

that

that the graunton may not after the two yeres incontinent enter vpon the grauntee, for this that the grauntee hath yet title by three yeres to haue and occupie the land by force of the same graunt. And so for this, that the condition on part of the grauntee is broken, and the graunton may not enter, the Law shall put the fee and franktenement in the graunton: For if the grauntee in this case make wast, then after the breaking of the condition &c. and after the two yeres the graunton shal haue his writ of wast, and this is a good proofe that the reuersion is to him &c. But in such case of feoffements vpon condition where the feoffour may enter lawfully for the condition broken &c. There the feoffour hath the franktenement before the entry &c.

Also, if a feoffement bee made vpon such condition, that the feoffee shall giue the land to the feoffour, and to the wife of the feoffour, to haue and to hold to them and to the heires of their two bodies ingendred, and for default of such issue, to remaine to the right heires of the feoffour. In this case if the husband die hauing the wife, before estate in the tatle made to him, then ought the feoffee by the law to make estate to the wife, as like to the condition, and as like to the intent of the condition as he may make it, that is to say, to let the land to the wife for terme of life without impeachment of the wast, the remainder after her decease to the heires ingendred of the body of her

husband & hers, & for default of such issue, the remainder to the right heires of the husband. And the cause why the lease shall be made in this case to the woman sole without impeachment of wast, is for this, that the condition is, that the estate shal be made to the husband and his wife in taile. And if such estate had been made in the life of the husband, then after the death of her husband shee hath estate in the taile sole, which estate is without impechmēt of wast, and so it is reason, that if after a man may make estate to the intent of the condition &c. that he shal make it &c. though that she cannot haue estate in the taile as shee might haue had, if the gift in the taile had beēn made to the husband & to her in the life of her husband &c.

Also in this case if the husband and the wife had issue and die before the gift in the taile made vnto them &c. then ought the feoffee to make estate to the issue, and to the heires of the father and mother ingendred, and for default of such issue &c. the remainder to the right heires of the husband &c. And the same Law is in other cases semblable: And if such a feoffour will not make such estate when he is reasonably required by them that ought to haue estate by force of the condition &c. then may the feoffour and his heires enter &c.

Also, if a feoffement be made vpon condition, that the feoffee shall infeoffe many men, to haue and to hold, to them and to their heires for euer, and all they that ought to haue

haue eſtate, die before any eſtate made vnto them, then ought the feoffee to make the eſtate to the heires of hym that ſurmiueth of them, to haue and to hold to hym, and to the heires of him that ſurmueth &c.

Alſo, if a feoffement be made vpon condition to enfeoffe an other, or to giue in the taile to an other &c. if the feoffee before the performing of the cõdition enfeoffe a ſtrange perſon, or make a leaſe for terme of life, then may the feoffour and his heires enter &c. for this, that he hath diſabled himſelfe to performe the condition, inſomuch that he made eſtate to an other &c. In ſuch maner it is, if the feffee before the condition performed, let the ſame land to a ſtranger for terme of yeeres: In this caſe the feoffor or his heirs may enter &c. for this that the feoffee hath diſabled himſelfe to make eſtate of the tenements according to that, that was in the tenements when the eſtate thereof was made vnto him, for if he will make eſtate according to the Condition &c. then may the feffee for terme of yeeres enter and put out him to whõ the eſtate is made &c. and to occupie this during his terme. And many haue ſaid, that if ſuch a feffemẽt be made to a man ſole vpon the ſame condition, and before that hee hath performed the condition he taketh a wife, then the feoffor or his heire may incontinent enter, for this that if hee haue made eſtate according to the condition, & after dieth, his wife ſhalbe endowed, & may recouer her dowrie by a writ of

Dower &c. And ſo by taking of a wife, the tenements be put in other plite then they were at the time of the feoffement vpon condition, for this, that no ſuch woman was dowable, nor ſhould be endowed by the law &c.

In the ſame manet it is, if the feffor charge the land by his deed of a rent charge before the performing of the condition, or be bound in a ſtatute Staple, or ſtatute Marchant, that in ſuch caſes, the feoffor & his heires may enter, Cauſa qua ſupra. For whoſoeuer commeth to the tenements by the feoffement of the feoffe, then the tenements muſt be lyable, and be put in execution by force of the Statute aforeſaid. But when the feoffor or his heires, for the cauſes aforeſaid haue entred ſo as they ought, as it ſeemeth &c. Then all ſuch things that before ſuch entry may trouble or incumber the tenements ſo giuen vpon condition, as touching the ſame tenement be vtterly defeated &c.

Alſo, if a man make a deede of feoffement to an other, & in the deed is no condition &c. And when the feoffor will make to him liuery of ſeiſin by force of the ſame deed, he maketh liuerie of ſeiſin vpon certaine conditions &c. In this caſe nothing of the tenements paſſeth by the deed, for this, that the condition is not compriſed in the deed, & the feffement is of ſuch force as if no ſuch deed had beene thereof made &c.

Alſo if a feffement be made vpon ſuch condition, that the feoffee ſhall not alyen the land to any man, this condition is void, for this, that

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when a man is infeoffed in landes or tenements, hee hath power to alien them to ſome perſon by the law. For if ſuch conditiõ ſhould be good, then the condition putteth him out of all the power that the Law giueth, which ſhould be againſt reaſon, and for this ſuch condition is voide. But if the condition be ſuch, that the feoffée ſhall not alien to one ſuch, naming his name, or to any of his heires, or his iſſues &c. or ſuch other like, the which condition taketh not away all the power of alienation of the feoffée &c. then ſuch condition is good.

Alſo, if tenements be giuen in the tayle vpon ſuch condition, that the tenant in the tayle, nor his heires &c. ſhall not alien in fee, nor in tayle, nor for terme of an others life, but for their owne liues &c. ſuch alienation and condition is good: And the cauſe is for this, that when he maketh ſuch alienation and diſcontinuance, hee doth contrarie to the intent, for which the Statute of Weſtminſter the ſecond was made, by which eſtatute, the eſtates in the tayle be ordeined, for it is prouued by the words comprized in the ſame eſtatute, that the intent of the making of the ſame eſtatute was, that the will of the donor in ſuch caſes ſhould be obſerued. And when tenant in the taile maketh ſuch diſcontinuance, he doth the contrarie to that &c. And alſo in eſtates in the tayle of any tenements when the reuerſion of the fee ſimple is in an other perſon, when ſuch diſcontinuance

tinuance is made, then the fée ſimple in the reuerſion, or the fée ſimple in the remainder is diſcontinued, and for that that the tenant in the taile ſhall doe no ſuch thing againſt right, ſuch conditions are good, as is aforeſaid &c.

Alſo a man may giue land in the taile vpon ſuch condition, that if the tenant in the taile or his heires alien in fée, or in taile, or for terme of an others life &c. And alſo, that if all the iſſues comming of the tenant in the taile be dead without iſſue, that then it ſhalbe lawfull to the donor and to his heires to enter &c. & by ſuch way the right of the taile may be ſaued after ſuch diſcontinuance to the iſſue in the taile if there be any, ſo that by way of entry of the donor or of his heires, the taile ſhall not be defeated by ſuch condition, and yet if the tenant in the taile in this caſe, or his heires make any diſcontinuance &c. hee in the reuerſion or his heires after this that the taile is determined for default of iſſue &c. may enter into the lād by force of the ſame condition, and ſhal not be driuen to ſue a writ of Formedō in the reuerſion.

Alſo, a man may not plead in an action that eſtate was made in fée, in the taile, or for terme of life vpon condition, but if he vouch a record thereof, or ſhew a writing vnder ſeale, proouing the ſame condition, for it is a common eruditi-on and learning, that a man by pleading ſhall not defeat any eſtate of frankſtenemēt by force of any ſuch condition, vnleſs he ſhew the proofe of ſuch condition in writing &c. except it be in

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ſome eſpeciall caſe, but of chattels reals, as of a leaſe made for terme of yeeres, or of graunts of wardes made by wardens in chiualry, and of ſuch other &c. a man may plead that ſuch giftes or graunts were made vpon condition &c. without ſhewing of any writing of condition. And in the ſame maner a man may do of giftes and graunts of chattels perſonels, and of contracts perſonels &c.

Alſo, though that a man in ſome action may not plead an action that toucheth and concerneth franktenement without ſhewing of writing thereof, as it is aforeſaid, yet a man may be holpen vpon ſuch condition by the verdict of xij. men taken at large in Aſſiſe of diſſeiſin, or in ſome other action where the Juſtices will take the verdict of the twelue Jurors at large. As put the caſe that a man ſeiſed of certaine land in fée, letteth the ſame land for terme of life without deede, vpon condition to yeeld to the leſſour a certaine rent, and for default of payment a reëntrie &c. by force of which the leſſee is ſeiſed as of a franktenement, and after the rent is behinde, by which the leſſour entreth into the land, and after the leſſee arraigneth an Aſſiſe of Nouel diſſeiſin of the land againſt the leſſor, the which pleadeth that he doth no wrong, ne no diſſeiſin, and vpon this the Aſſiſe is taken.

In this caſe the recognitors of the Aſſiſe may ſay and yeeld to the Juſtices their verdict at large vpon all the matter, as to ſay that the

defendant was seised, and so seised, let the same land to the plaintife for terme of his life, to yeeld to the lessor such annuell rent payable at such a feast, & vpon such condition, that if the rent be behind at any such feast that it ought to be paied, that then it shall be lawfull to the lessor to enter &c. by force of which lease the plaintif was seised in his demesne as of franktenement, & after the rent was behind at such a feast, in such a yeere &c. for which the lessor entred into the land vpon the possession of the lessee, & prayeth the discretion of the Justices, if this be a disseisin done by the plaintif or not. And then for this that it appeareth to the Justices, that this was no disseisin done to the plaintife, insomuch that, that the entry of the lessor was lawful vpon him, the Justices ought to giue iudgement that the plaintife shall take nothing by his writ of Assise. And so in such case the lessor shall be holpen, & yet no writing was euer made of the condition, for aswell as the Iurors may haue knowledge of the lease, in the same maner may they haue knowledge of the condition rehearsed in the lease. In the same maner is it of a feoffement in fee, or a gift in the taile vpon condition, though neuer writing were made therof &c. And as it is said of a verdict at large in Assise, in the same maner it is of a writ of Entre founded vpon disseisin, & in all other actions where the Justices will take a verdict at large, there where the verdict at large is made, the nature of the matter is

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put in the iſſue. Alſo in ſuch caſe where the Enqueſt may ſay their verdict at large, if they will take vpon them the knowledge of the law vpon the matter, they may ſay their verdict generall, as it is put in their charge, as in the caſe aforeſaid, they may well ſay that the leſſor diſſeiſed not the leſſée if they will &c.

Alſo in the ſame caſe, if the caſe were ſuch that after this that the leſſor hath entred for default of payment &c. that the leſſée had entred vpon the leſſor and him diſſeiſed: In this caſe if the leſſor arraigneth an Aſſiſe againſt the leſſée, the leſſée may barre him of his Aſſiſe, for he may plead againſt him in barre, how the leſſor that is plaintife made a leaſe to the defendant for terme of life, ſauing the reuerſion to the plaintife, the which is a good plée in barre, inſomuch that he knowledgeth the reuerſion to be to the plaintife, and in this caſe he hath no matter to helpe him, but the condition made vpon the leaſe, and that he may not plead, for that he hath no writing, and inſomuch that he may not anſwere to the barre, he ſhall be barred. And ſo in this caſe yée may ſée, that a man is ſeiſed, and he ſhall haue aſſiſe, and yet if the leſſée be plaintife, and the leſſor defendant he ſhall barre the leſſée by verdict of the aſſiſe. But in this caſe where the leſſée is defendant, if he will not plead the ſaid plée in barre, but plead no wrong ne diſſeiſin, then the leſſor ſhall recouer by Aſſiſe, Cauſa qua ſupra.

Alſo becauſe ſuch conditions be moſt com-

monly

monly put & specified in dedes indented, some little thing shal be said here (to thee my sonne) of Indētures, & of a dēd Poll conteining conditions. And it is to wit, that if the indēture be bipartite or tripartite, or quadripartite, all the parts of the Indenture be but one dēde in the Law, & euery part of the Indenture is of him self of as great force and effect, as all the parts together. And the making of Indentures is in ij. maners. One is to make them in the third person, an other maner is to make them in the first person. The making of the third person is as in such forme. This Indenture made betweēn A. of B. of the one part, & C. of D. of the other part, witnesseth, that the foresaid A. of B. hath giuen & granted, & by this present dēd indēted, hath cōfirmed to the foresaid C. of D. such land, To haue &c. vpon the condition &c. In witnes whereof the parties beforesaid interchangeably haue put to their seales: Or els thus. In witnes wherof to ỹ one part of this indēture remaining with the said C. of D, the foresaid A. of B. hath put to his seale, & to the other part of the said Indenture remayning with the said A. of B, the said C. of D. hath put to his seal, giuen &c. Such Indētures are called indētures made in the third person, for this that the verbes be in the third person, and such forme of indēture is the more sure making, for that it is more cōmonly vsed. The making of Indētures in the first person is of such forme.

To all true Christian people to whom this

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preſent writing indented ſhall come, A. of B. greeting in our Lord euerlaſting. Knowe ye me to haue giuen & graunted, and by this my preſent deed indented to haue confirmed to C. of D. ſuch land &c. Or els thus: Knowe all men that be preſent, and them that be to come, that I A. of B. haue giuen & graunted, and by this my preſent deed indented haue cõfirmed to C. of D. ſuch land &c. to haue &c. vpon the condition followyng: In witnes whereof aſwell I the ſaid A. of B. as ỹ foreſaid C. of D. to theſe Indentures interchangeably haue put to our ſeales: or els thus. In witnes whereof to one part of this Indẽture I haue put to my ſeale, and to the other part of the ſame Indenture the foreſaid C. of D. hath put to his ſeale &c.

And it ſeemeth that ſuch an Indẽture made in the firſt perſon, is as good in the law as the Indenture made in the third perſon, when both parties haue thereto put their ſeales, for in the Indenutre made in the third perſon or in the firſt perſon, if mention be made that the graunter hath ſet his ſeale only, & not the grantee, then is the Indenture only the deed of the graunter. But where mention is made that the grauntee hath ſet his ſeale to the Indenture &c. then is the Indenture as wel the deed of the graunter, as the deed of the grantee, & thus it is the deed of both, and alſo euery part of the Indenture is the deed of both parties in ſuch caſe &c.

Alſo if eſtate be made by Indenture to a man

man for terme of his life, the remainder to an other in fée vpon Condition &c. and if the tenant for terme of life hath ſet his ſeale to one part of the Indenture, and after dyeth, and he in the remainder &c. entreth by force of his remainder, in this caſe he is holden to performe all the conditions compriſed within the Indenture, as the tenant for terme of life ought to doe in his life, and yet he in the remainder never ſealed any part of the Indenture: But the cauſe is, that in ſo much that hée entreth and agréeth to haue the land by force of the Indenture, he is holden to performe the condition within the Indenture, if he will haue the land &c.

Alſo if a feoffement be made by déede Poll vpon condition &c. And for this that the Condition is not performed, the feoffor entreth and hapeth the poſſeſſion of the déed Poll, if the leſſée bring an action of that entry againſt the feoffor, it hath beene a queſtion, if the leſſor may plead the Condition &c. by the déede Poll againſt the feoffée: And ſome haue ſaid nay, inſomuch that it ſeémeth vnto them, that a déed Poll, and the propertie of the ſame déed appertaineth to him to whom the déede is made, and not to him that made the déede, and inſomuch that ſuch a déede appertayneth not to the feoffor, it ſeémeth to them that he may not plead this deed &c. And other haue ſayd the contrary, and haue ſhewed diuers cauſes. One is, if the caſe be ſuch, that in the action

betweene them the feffee plead the same deed, & shew this to the court: In this case insomuch that the deed is in the court, the feoffor may shew to the court, how in the deed be diuers conditions to be performed of the part of the feffee, and for this that they be not performed, he entred &c. and thereto he shalbe receiued: by the same reason when the feoffor hath the deed in hand, & sheweth it to the court, he shalbe wel receiued to plead of this &c. and namely when the feoffor is priuie to the deed, for he ought to be priuie to the deed when he made the deed.

Also if two men make or doe a trespas to an other, the which releaseth to one of them by his deed all actions personels &c. Notwithstanding hee sueth an action of Trespasse against the other, the defendant may well shew that the Trespas was done by him & an other his fellow, and that the plaintife by the deed that he shewed forth releaseth to his fellow, all actions personels, and yet such deed appertaineth to his fellow, and not vnto him, but for this that he may haue aduantage by the deed, if hee will shew the deed to the Court, he may well plead &c. Therefore by the same reason in the other case, whē the feoffor ought to haue aduantage by the condition compriſed within the deed Doll.

Also, if the feoffee gaue or graunted the deed Doll to the feoffor, such grant shalbe good, and then the deed, and the propertie of the deed appertaineth to the feoffour. And when the

feoffor hath the deed in hand, and pleadeth it to the court, it ſhall be rather vnderſtood that hee came to the deed by a lawfull meane then by a torcions meane. And ſo it ſeemeth that they may wel plead ſuch a deed Poll, that comprehendeth condition &c. if he haue the deed in hand &c. Ideo ſemper quære de dubijs, quia per rationes peruenitur ad legit rationem.

Eſtates that men haue vpon condition in the Law, be ſuch eſtates that haue condition in the Law annexed to them, though it be not ſpecified in writing, ſo as a man graunt by his deed to an other the office of a Parkerſhip of a Parke, to haue and to occupie the ſame office for terme of his life, the eſtate that hee hath in the office, is vpon condition in the Law, that is to ſay, that the Parker well and truely ſhall keepe the Parke, & doe that, that to the office appertaineth to doe: or otherwiſe, that it ſhall be lawfull to the graunter and to his heires to put him out, and to graunt that to an other if he wil &c. And ſuch condition as is vnderſtood by the law to be annexed to ſome thing, is as ſtrong as if the condition were ſet or put in writing. In the ſame maner it is of graunts of offices of Stewards, Conſtables, Bedels, Bailifes, and other officers. But if ſuch office be graunted to a man to haue & to occupie by him or by his deputie, then if the office be occupied by him or by his deputie as it ought by ye Law to be occupied, this ſufficeth for him, or els the grantor or his heires may put him out

as

as is aforeſaid.

Alſo, eſtates of lands or tenements may be vpon condition in the Law, though that vpon the eſtate made, there was no reherſall made of the condition: As put the caſe that a leaſe be made to the huſband and his wife, to haue & to hold to them during the couerture betweene them, in this caſe they haue eſtate for terme of their two liues vpon condition in the law, that is to ſay, if one of thē die, or if diuorce be made betweēn them, that then it ſhal be lawful to the leſſor & his heires to enter &c. & that they haue eſtate for terme of their two liues, it is proued thus: Euery man that hath eſtate of frankte-nement in any lands or tenements, either he hath eſtate in fée, or in fée taile, or for terme of life, or for terme of an others life, & yet by ſuch leaſe they haue franktenement, but they haue not by the graunt, fée, nor taile, nor for terme of an ōthers life, Ergo they haue eſtate for terme of their two liues, but this is vpon condition in the law in forme aforeſaid. And in this caſe if they make waſt, the leſſor ſhall haue againſt them a writ of waſt, ſuppoſing by his writ, Quod tenēt ad terminū vitę &c. but in his plée he ſhall declare how & in what maner the leaſe was made. In the ſame maner it is, if an Abbot make a leaſe to a man, to haue & to hold during the time that the leſſor is Abbot: In this caſe the leſſée hath eſtate for terme of his own life: but this is vpō condition in law, that is to ſay, that if ꝑ Abbot die, or reſign, or be depoſed,

it ſhall be lawful to his ſucceſſors to enter &c.

Alſo, a man may ſée in the booke of Aſſiſes, An. 38.E.3. a plee of aſſiſe in this forme that inſueth. Aſſiſe of Nouel diſſeiſin was ſometime brought againſt one A. that pleadeth to the aſſiſe, & was found by verdict that the auncestor of the plaintife deuiſed the tenemẽts to be ſold by ꝑ defendant that was his executor to make diſtribution of the money for his ſoule: And it was found, that a man after the death of the teſtator tendred him a certain ſumme of money for the tenements, but not to the value, & that the executor after helde the tenements in his owne hand by two yeere, to the intent to haue ſold the tenements more dearer to ſome other: And it was found that he had all the while after taken the profits of the tenements to his own vſe, without any thing doing for ꝑ ſoule of the dead. ¶Mombray, the executor in ſuch caſe is holden by the law to make ſuch ſale as ſone as he may after the death of the teſtator, and it is foũd that he refuſed to make the ſale, & ſo the default was in him: And alſo by force of the deuiſe he was holden to haue put all the profits of the ſaid tenements to the vſe of the dead, and it is found that he hath taken them to his owne vſe, and ſo an other default is in him, wherefore it was aiudged that the plaintife ſhould recouer &c. And ſo it appeareth in ꝑ ſaid iudgemẽt, that by force of the ſaid deuiſe the executor had none eſtate or power in the tenements, but vpon condition in the law &c.

And

And in ſuch caſes it nedeth not to haue ſhewed any deed, reherſing the conditions &c. Ex paucis dictis intendere plurima poſſis. More ſhal be ſaid of cõditions in the chapter of Diſcents that take away entrie, & in the chapter of Releales, & in the chapter of Diſcontinuance.

Diſcents.

DIſcents that take away entries be in iij. maners: that is to ſay, where the diſcent is in fee, or in fee taile. Diſcent in fee that taketh away entrie is, if a man ſeiſed of certein lands or tenements, is diſſeiſed, & the diſſeiſor hath iſſue and dieth of ſuch eſtate ſeiſed: Now the tenements diſcend to the iſſue of the diſſeiſor by courſe of the Law as heire vnto him. And for this that the law putteth the lands or tenements vpon the iſſue, and the iſſue commeth to the tenements by courſe of the Law, and not of his owne deed, the entry of the diſſeiſee is taken away, and is thereof put to his writ of Entre vpon diſſeiſin againſt the heire of the diſſeiſor to recouer the land.

Diſcent in the tayle that taketh away entrie is, if a man be diſſeiſed, and the diſſeiſor giueth the ſame land to an other in the tayle, and the tenant in the taile hath iſſue and dyeth ſeiſed of ſuch eſtate, and the iſſue entreth, in this caſe the entrie of the diſſeiſee is taken away, and he is put to ſue againſt the iſſue of the tenant in the taile, a writ of Entre vpon

diſſeiſin &c.

And note well, that in ſuch diſcents that take away entries, it behoueth that a man die ſeiſed in his demeſne as in fée taile, for dying ſeiſed for terme of life, or for terme of an others life, ſhall neuer take away the entrie &c.

Alſo, a diſcent of reuerſion, or of remainder ſhall neuer take away entrie &c. ſo that in ſuch caſes that take away entries by force of diſcents, it behoueth that he that died ſeiſed haue fée & frankteneinent at the time of his dying, or elſe ſuch diſcent taketh not away entrie.

Alſo as it is ſaid of diſcents that diſcēd to the iſſue of him that dieth ſeiſed &c. the ſame law is where they haue no iſſue, but the tenemēts diſcēd to ỹ brother, or to the ſiſter, or to the vncle, or to ſome other coſin of him, ỹ dieth ſeiſed &c.

Alſo, if there be Lord and tenant, and the tenant be diſſeiſed, and the diſſeiſor alieneth to an other in fée, & the alienée dyeth without heire, and the Lord entreth as in his eſcheat. In this caſe the diſſeiſée may enter vpon the Lord, for this, that the Lord commeth not to the land by diſcent, but by eſcheat.

Alſo, if a man ſeiſed of certaine land in fée, or in fée taile vpon cōdition to yeeld certain rent, or vpon other condition, though that ſuch tenant ſeiſed in fée, or in fée taile die ſeiſed, yet if ỹ cōdition be broken in their life, or after their deceaſe &c. this taketh not away the entrie of the feffor, nor of the donor, or of their heirs, for this that the tenancy is charged with the con-

dition,

dition, and the eſtate of the tenancie is conditionall in whoſe hands ſoeuer the tenancie ſhall come &c.

Alſo, if ſuch a tenant vpon condition be diſſeiſed, & the diſſeiſor die therof ſeiſed, & the land diſcēdeth to ỹ heire of ỹ diſſeiſor, now the entry of the tenant vpon conditiō that was diſſeiſed is taken away, but if the condition be broken &c. then may the feffor or the donor ỹ made the eſtate or their heires enter &c. Cauſa qua ſupra.

Alſo, if a diſſeiſor die ſeiſed, & his heires enter &c. the which endoweth the wife of the diſſeiſor of the third part of the tenements, in this caſe, as to the third that is aſſigned to the wife in dower, incontinent anon after that the wife entreth and hath poſſeſſion of the ſame third part, the diſſeiſée may lawfully enter vpon the poſſeſſion of his wife in the ſame third part. And the cauſe is for this, that when the wife hath her dower, ſhe ſhalbe adiudged in rather immediatly by her huſband then by the heire, & ſo as to the franktenement of the ſame third part, the diſcent is defeated. And ſo ye may ſée how before the dowment the diſſeiſée might not enter in any part &c. and after the dowment he may enter vpon the wife, and yet hee may not enter vpon the other two partes that the heire of the diſſeiſor hath by diſcent &c.

Alſo, if a woman be ſeyſed of land in fée, whereof I haue right and title to enter, if the woman take an huſband and haue iſſue betweene them, and after the wife dyeth ſeiſed,

and after that the husband dieth, and the issue entreth &c. in this case I may enter vpon the possession of the issue, for this, that the issue commeth not to the tenements immediatly by discent after the death of his mother. An. 9. H. 7 fol. 24. it is holden contrary.

Also, if a disseisor infeoffe his father, & the father entreth and dieth of such estate seised, by which the tenements discend to the disseisor, as to the sonne and heire &c. In this case the disseisee may well enter vpon the disseisor, notwithstanding the discent, for this, that as to the disseisin, the disseisor shalbe adiudged in but as the disseisor, notwithstanding the discent.

Also, if a man seised of certaine land in his demeane as of fee, hath issue two sonnes & dyeth, & the yonger sonne entreth by abatement in the land, the which hath issue, and of this dyeth seysed, and the tenements discend to the issue, and the issue entreth into the land: In this case the elder sonne or his heires may enter by the Law vpon the issue of the yonger sonne, notwithstanding the discent, for this, that when the yonger sonne abated in the land after the death of his father, before any entre of the elder, the law intendeth that hee entreth in clayming as heire vnto his father, and for this that the elder brother claymeth by the same title, that is to say, as heire vnto his father, hee & his heires may enter vpon the issue of the yonger brother, notwithstanding the discent &c. for this, that they claime by one selfe

title. And in the same maner it shalbe if there be many discents from one issue to an other issue of the yonger sonne &c. But in such case, if the father were seised of certaine lāds in fee, and hath issue two sonnes and dieth, and the elder sonne entreth and is seised &c. And after the yonger sonne disseiseth him, by which disseisin he is seised of fee, and hath issue, and of such estate dieth seised, then the elder brother may not enter, but is put to his writ of Entre vpon disseisin for to recouer the land. And the cause is for this. that the yonger brother commeth to the tenements by a wrong disseisin made vnto his elder brother, & for that wrong the law may not intend that hee claymeth as heire to his father, no more then if a straunge person had disseised the elder brother that neuer had any title &c. And so may yee see the diuersitie, where the yonger brother entreth after the death of his father, before any entrie made by the elder brother in such case &c. And where the elder brother entreth after the death of his father, & is disseised by the yonger brother &c. In the same maner if a man seised of certain land in fee, hath issue two daughters, & dieth, & the elder daughter entreth in the land, claiming all the land to her, and thereof onely taketh the profites, and hath issue & dieth seysed, by which her issue entreth, which issue hath issue and dieth seised, and the second issue entreth &c. Et sic vltra, yet the yonger daughter and her issue, as to the halfe may enter vpon euery

euery iſſue of the elder daughter, notwithſtanding ſuch diſcent, for this that they clayme by one ſeiſe title &c. But in ſuch caſe if both two ſiſters come into the land to enter after the death of their father, & thereof were ſeiſed, and after the elder ſiſter therof diſſeiſed the ponger ſiſter of that, that to her belongeth, & thereof is ſeiſed in fée, & hath iſſue, & of ſuch eſtate dyeth ſeiſed, by which the tenements diſcend to the iſſue of the elder ſiſter, then the ponger ſiſter or her heires may not enter &c. Cauſa qua ſupra.

Alſo, if a man ſeiſed of certaine land hath iſſue two ſonnes, and the elder brother is baſtard, and the ponger brother Mulier, and the father dyeth, and the baſtard entreth and claymeth as heire vnto his father, and occuppeth the land all his life without any entry made vpon him by the Mulier, and the baſtard hath iſſue and dieth of ſuch eſtate ſeiſed in fee, and the land diſcendeth to his iſſue, and his iſſue entreth &c. in this caſe the Mulier is without remedy, for he may not enter, nor he ſhall haue no action for to recouer the land, for this that it is an auncient law in ſuch caſe vſed. But it hath béene an opinion of ſome men, that that ſhall be vnderſtood where the father hath a ſonne a baſtard by a woman, & after hee weddeth the ſame woman, and after the eſpouſall hee hath iſſue by the ſame woman a ſonne or a daughter mulier, & the father dieth &c. if ſuch a baſtard enter &c. and hath iſſue, and dyeth ſeiſed &c. Then ſhall the iſſue of ſuch a baſtard

haue

haue the land clérely to him as it is afore-said &c. And not any other bastard borne of the mother that was not espoused to his Father, and this is a good and reasonable opinion: For such a bastard borne before the espousels solempnized betweene his father and his mother by the Law of holy Church is Mulier, though that by the Law of the land he is a bastard borne, and so he hath colour of entrie as heire to his father, for this that he is by one law Mulier, that is to say, by the Law of holy Church. But otherwise it is of a bastard that hath no manner of colour to enter as heire, insomuch that he may not in no law be said Mulier &c. for such a Bastard is said Quasi nullius filius: But in such case afore-said, where the bastard entreth after the death of his Father, and the Mulier putteth him out, and after the Bastard disseiseth the Mulier, and hath issue, and dyeth seised, and the issue entreth, then the Mulier may haue a writ of Entre vpon Disseisin against the issue of the bastard, and recouer the land &c. And so may yee see the diuersitie where such a Bastard continueth his possession all his lyfe without any interruption, and where the Mulier entreth and interrupted the possession of such a bastard.

Also if a child within age haue title & cause to enter into any landes or tenements vpon an other that is seised in fée, or in fée taile of the same lands or tenements, if such a man

that

that is ſo ſeiſed die of ſuch eſtate ſo ſeiſed, and the tenements diſcend to his iſſue during the time that the childe is within age, ſuch diſcent ſhall not tolle the entrie of the childe, but he may enter vpon the iſſue that is in by diſcent &c. for this that no laches ſhall be adiudged in a child within age in ſuch caſe &c.

Alſo, if the huſband and his wife, as in right of the wife haue title and right to enter in the tenements that an other hath in fée, or in fée taile, & ſuch a tenant dyeth ſeiſed &c. In ſuch caſe the entrie of the huſband is taken away vpon the heire that is in by diſcent. But if the huſband die, then the wife may wel enter vpon the iſſue by diſcent, for this that the laches of the huſband ſhall not turne to the wife & to her heires in preiudice nor in damage in ſuch caſe, but that the wife & her heires may well enter where ſuch diſcent is during the couerture &c.

Alſo, if a man that is not of whole minde, that is to ſay in Latin, Qui non eſt compos mentis, hath cauſe to enter in any ſuch tenements, if ſuch diſcent vt ſupra be had in his life during the time that he was out of his mind, and after die, his heires may well enter vpon him that is in by diſcent. And in this may ye ſée a caſe that ỹ heire may enter, & yet his anceſter that had the ſame title may not enter, for he that was out of his mind at the time of ſuch diſcent, if he will enter after ſuch a diſcent, if an action vpon this be ſued againſt him, he hath nothing for him to plead, or to helpe him, but

ſay

say that he was out of mind at the time of such discent &c. And he shall not be receiued to say this, for this that no man of full age shal be receiued in any plee by the law to disait or disable his owne person. But the heire may well disable the person of his auncestor for aduantage of the heire in such case, for this, that the laches may be adiudged by ỹ law in him that hath no discretion in such case. And if such a man out of his mind make a feoffement &c. he may not enter, ne haue a writ called Dum non fuit cõpos mentis &c. Causa qua supra. But after his death his heir may wel enter or haue the same writ Dũ nõ fuit cõpos mẽtis at his election &c.

Also, if I be disseised by a child within age that alieneth to an other in fee, and the alienee dyeth seised, and the tenements discend to his heire, the child being within age, mine entrie is taken away. But if the child within age enter vpon the heire that is in by discent, as he well may, for this that the discent was during his nonage, then I may well enter vpon the disseisor, for this, that by his entrie he hath defeated and adnulled the discent.

And in the same maner it is where I am disseised, & the disseisor maketh a feoffement in fee vpon condition &c. & the feoffee dieth of such estate seised &c. I may not enter vpõ the heire of the feoffee: But if the condition be broken so that by such cause the feoffor entreth vpon the heire, now may I wel enter, for this that whẽ the feoffor or his heires enter for the condition broken,

broken, the diſcent is vtterly defeated.

Alſo, if I be diſſeiſed, and the diſſeiſor hath iſſue and entreth into Religion, by force of which the landes diſcend to his iſſue, in this caſe I may well enter vpon the iſſue, and yet there was a diſcent: But for this that ſuch diſcent commeth to the iſſue by the fathers deed, that is to ſay, for this that he entred into religion &c. and his diſcent commeth not to him by the deed of God, that is to ſay, by death &c. mine entrie is congeable and lawfull, for if I arraigne an Aſſiſe of Nouel diſſeiſin againſt my diſſeiſor, though he after enter into Religion, this ſhal not abate my writ: But my writ this notwithſtanding, ſhall abide in his force and ſtrēgth, and my recouery againſt him ſhall be good. By the ſame reaſon the diſcent that came to his iſſue by his own deed may not put me from mine entrie &c.

Alſo, if I let to a man certaine landes for terme of xx. yeeres, and an other diſſeiſeth me, and putteth out the termor, and dyeth ſeiſed, and the tenements diſcend vpon his heire, I may not enter, and yet the leſſee for terme of yeeres may well enter, for this that by his entrie he putteth not out the heire that is in by diſcent from the franktenement that vnto him diſcended, but onely claymeth to haue the tenements for terme of yeeres, the which is no expulſing of the franktenement of the heire, that is in by diſcent. But otherwiſe it is where my tenant for terme of life is diſſeiſed

&c.

&c. Causa qua supra.

Also, it is said that if a man be seised of tenements in fee by occupation in time of warre, & dieth thereof seised in time of warre, & the tenements discend to his heire, such discent putteth out no man of his entry. And of this a mã may see a plee in a writt of Ayel, An 7. E. 2.

Also that no dying seised (where all the tenements come to an other by succession) shall take away the entry of any person &c. For of Prelates, Abbots, Priors, Deanes, or Parsons of Churches &c. though that there were 20. successors, this putteth no man from his entry &c. More shall be said of discents in the Chapter of continuall claime &c. See statute 32. H. 8. cap. 33.

Continuall claime.

COntinuall claime is, where a man hath right & title to enter in any landes or tenements whereof an other is seised in fee, or in fee taile, if hee that hath title to enter make continuall claime to the lands & tenements, before the dying seised of him that holdeth the tenements: Then though such a tenant die thereof seysed, and the landes and tenements discend to his heire, yet may hee that hath made such claime, or his heires, enter into the landes and tenements discended, because of the continuall claime made, notwithstanding such discent. As in case a man be disseised, and the disseisee ma-

maketh continuall claime to the tenements in the life of the disseisor, though the disseisor die seised in fee, and the land discendeth vnto his heires, yet may the disseisee enter vpon the possession of the heire, notwithstanding such discent.

In the same maner it is, if tenant for terme of life alien in fee, he in the reuersion, or hee in the remainder may enter vpon the alienee. And if such alienee die seised of such estate without continuall claime made to the tenements before the dying seysed of the alienee, & the tenements because of the dying seised of the alienee discend vnto the heire of the alienee, then may not he in the reuersion, nor he in the remainder enter. But if he in the reuersion, or hee in the remainder that hath cause to enter vpon the alienee, made continual claime to the tenements before the dying seised of the alienee, then such a man may enter after the death of the alienee, as well as he might in his life &c.

Also, if landes be let vnto a man for terme of his life, the remainder vnto an other for terme of life, the remainder vnto the third in fee, if the tenant for terme of life alien to another in fee, and hee in the remainder for terme of life maketh continuall claime vnto the land before the dying seised of the alienee, & after the alienee dyeth &c. and after he in the remainder for terme of life dyeth before any entry made by him: In this case hee in the remainder in fee may enter vpon the heire of the alienee, because

because of continuall claime made by him that had ỹ remainder for terme of life, for this that such right that he hath to enter, shall goe and remaine to him in the remainder after him, insomuch that he in the remainder in fee may not enter vpon the alienee in fee during the life of him in the remainder for terme of life, and because he might not make continuall claime, for none may make continuall claime but when he hath title to enter. But it is to be shewed to thee my child how & in what maner continuall claime shalbe made, & to learne this 3. thinges there be to be vnderstood. The first thing is, if a man haue cause to haue any landes or tenements in diuers townes within one shire, if he enter in any parcell of the landes or tenements that be in one towne, in the name of all the lands or tenements to which he hath right to enter within al the towns in the same shire, by such entry he hath as good possessiõ & seisin of such lands or tenements whereof he hath title to enter, as if he had entred into euery parcell, and this seemeth great reason, for if a man will enfeffe an other without deed, of certaine lands or tenements ỹ he hath in many townes within one shire, & he will deliuer seisin to the feoffee of parcell of the tenements within one towne in the name of all the lands & tenemẽts that he hath in ỹ same towne, & in all the other townes &c. all the said tenements &c. shall passe by force of the said liuerie of seisin to him to whom such feoffement in such maner is made

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And yet he to whō such liuery of seisin is made hath no right to all the lands & tenemēts in all the townes, but by reason of the liuery of seisin made of parcel of the lāds or tenements in one towne, a multo fortiori it seemeth good reason that when a man hath title to enter into lands or tenemēts in diuers townes within one shire before any entry by him made, that by the entrie of him made in parcell of the tenemēts in one towne, in the name of all the lands & tenements to the which he hath title to enter within the same shire, this is a seisin of all in him, & by such entry hee hath possession and seisin in deed, as if he had entred into euery parcell &c.

The second is to vnderstand, that if a man hath title to enter into any lands or tenemēts, if he dare not enter into the same landes or tenements, nor in any parcell therof for doubt of beating or for doubt of maiming, or for doubt of both, if he go & approch as nigh ẏ tenemēts as he dare for such doubt, & claime by words the tenements to be his, incontinent by such claime he hath a possession & seisin in the tenements, aswel as if he had entred indeed though he had neuer possessiō or seisin of the same lāds or tenements before the said claime. And that the law is such, it is wel proued by a plee of an assise in the booke of Assises, An. 38. E. 3. fo. 33. the tenor of which ensueth in this forme.

In the county of Dorset before the Iustices it was found by verdict of Assise, that the plaintife which had right by discent of heri-

tage,

tage, to haue the tenements put in plaint at the time of the death of his auncestor, which was dwelling in the towne where the tenements were, and by word claymeth the tenements among his neighbors, but for doubt of death he durst not approch vnto the tenemēts, bringeth an Assise, & vpon the matter found, it was awarded that he should recouer.

The third thing is, to vnderstand within what time, and by what time the claim that is said cōtinual clanne shall serue & help him that made the claime & his heire. And as to this it is to wit, that he that hath title to enter, when he will make his claime, if he dare approch vnto the land, then it behoueth him to goe vnto the land, or to parcell of it, & make his claime: And if he dare not approch vnto the land for dread of beating, mayming, or death, then it behoueth him to goe & to approch as nigh as he dare toward the land or parcell therof, & make his claime. And if his aduersary that occupieth the land die seised in fee, or in fee taile, within a yere & a day after such claime made, by which the tenements discend vnto his sonne, as heire vnto him, yet may he that made the claime, enter vpon the possession of the heires. But in this case after ỹ yere & the day that such claime was made, if none other claime be made, if the father then die seised the morrow after the yere & the day, or at an other day after &c. then may not he that made ỹ claim enter. And therfore if he that made ỹ claim will be sure alway that his

entrie shall not be taken away by such discent; it behoueth him that within the yere & the day after the first claime, to make an other claime, in the forme aforesaid. And within the yere & the day after the second claime, to make the 3. claime in the same maner, & within the yere & the day after the third claime, to make another claime &c. that is to say, to make another claim within euery yere & day next after euery claim made during the life of his aduersary, & then at what time that his aduersary die, his entrie shall not be taken away by discent. And such claime made in such maner is most commonly taken and called continuall claime of him that made the claime. But yet in case aforesaid, where his aduersary dieth within the yere and the day next after the first claime, this is in the law a continual claime, insomuch that his aduersary died within the yere & the day after the same claime, for it is no néd for him that made the claime, to make any other claime, but at what time he will within the same yére & the day &c. Also if his aduersary be disseised within the yere & day after the claime, and the disseisor dieth therof seised within the yére and the day &c. this dying seised shall not hurt him that made the claime, but that he may enter &c. For whosoeuer he be that died seised within ỹ yere & the day after such claime, that shall not hurt him that made the claime, but that he may enter though there were many dyings seised, and many discents within the yére and the day &c.

Also

Also, if a man be disseised, and the disseisor die seised within the yeere & the day next after the disseisin done, whereby the tenements discend to his heire, in this case the entrie of the disseisee is taken away, for the yeere & the day that should helpe the disseisee in such case &c. shall not be taken from the time of the title of entrie growen vnto him, but only from ỹ time of the claime by him made in time aforesaid, & for that cause it shall be good for such a disseisee for to make his claime &c. in as short time as he may after the disseisin &c.

Also, if such a disseisor occupy the land by xl. yeres without any claime made by the disseisee &c. & the disseisee by little space before the death of the disseisor make claime in the forme aforesaid, if so it fortune that within a yeere & a day after such claime the disseisor die seised &c. the entrie of the disseisee is congeable, & for this it shalbe good for such a man that made no claime that hath title to enter &c. when he heareth that his aduersary lieth sick to make his claime &c.

Also, as it is said in the cases put before, where a man hath title to enter because of a disseisin &c. The same Law is where a man hath right to enter because of the title &c.

Also in the said Presidents may yee know my childe two things. One is where a man hath title to enter vpon any tenant in tayle, if he make any such claime vnto the land &c. then is the state of the taile defeated, for that claime is as an entrie made by him, and is of the same

effect in the law, as if he were vpon the same tenements, and had entred in the same tenements, as is aforesaid, And then when the tenant in taile immediatly after such claime continueth his occupation in the tenements, this is a disseisin made of the same tenements vnto him that made the claime. Et sic per consequens, the tenant then hath fee simple &c.

The second thing is, that as oft as he that hath right to enter maketh such claime, & this notwithstãding his aduersary continueth his occupation &c. so oft the aduersary doth wrong & disseisin to him that made the claime. And for this cause so oft may he that made the same claime for euery such wrong & disseisin made vnto him, haue a writ of trespas, Quare clausum suũ fregit &c. to recouer his damages &c. Or he may haue a writ vpon the statut of king Rich. the 2. made the 5. yere of his raigne, supposing by his writ that his aduersary hath entred into the lands or tenements of him that made the claime, where his entrie was not geuen by the law &c. & by such action he shall recouer his damages &c. And if the case be such, that the aduersary occupy the tenements with force & armes, or with a multitude of people at the time of such claime &c. Then may he that made the claim, for euery such time haue a writ of forcible entry & recouer his treble damages.

Also here it is to see if the seruant of a man that hath title of entrie, may by the commandement of his Master make continuall claime for

for his Master in his name, & it seemeth that in some cases he might do this, for if hee by his commandement come to any parcel of the land and there maketh claime &c. in the name of his Master, this claime is good for his Master, for this that he hath done all that it behoueth his Master to doe in such case &c.

Also if a Master say vnto his seruant that he dare not go into the lād, nor into any parcel of the land for to make his claime &c. and dare not approch more nigh vnto ỹ same land, sane to such a place called Dale, & commandeth his seruāt to go to the same place of Dale, & there to make a claime for him &c. if the seruant doe &c. this seemeth as good claime for his master, as if he had bēen there in his owne person, for that thē seruant did all that his Master durst doe, and ought to doe by the law in such case.

Also, if a man be so sicke, or so lame that hē may not in any maner come to the land, nor to any parcell of the same, or if there be a reclusé that he may not because of his order goe out of his house &c. if such a manner of person commaund his seruant to goe and make claime for him &c. and the seruant dare not go to the land, nor to any parcell thereof for doubt of beating, mayme, or death, and for that cause such seruant commeth as nigh to the land as hee dare for such dread, and maketh his claime &c. for his Master, it seemeth that such claime for his Master is good and strong in law, for els his Master should be in too great mischiefe, for it

it may well be that such a person that is sicke, or lame, or recluse, cannot find any seruant that dare goe vnto the land, nor to any parcell of it to make the claime for him &c. But if the Master of such a seruant be in good health and may & dare well to goe to the tenements, or to parcell of it to make his claime for him &c. if such a Master commaund his seruant to goe to some parcell of the land and make claime for him &c. And when the seruant is going to do the commaundement of his Master, he heareth by the way such thinges that hee dare not goe to any parcell of the land for to make any clayme for his Master, & for that cause he goeth as nigh vnto the land as hee dare for doubt of death, and there he maketh claime for his Master in the name of his Master &c. It seemeth that the doubt in the law in such case shalbe if such claime auaile his Master or not, for this that the seruant did not all that his Master at the time of commaundement durst to haue done.

Also some haue said, that where a man is in prison and is disseised, and the disseisor dyeth seised, during the time that the disseisee is in prison, by ꝯ which tenements discended to the heire of the disseisor, they haue said that this shall not hurt the disseisee that is in prison, but that hee may well enter notwithstanding such discent, for this that he may not make continuall claime whē he was in prison. And also if such a one that is in prison be outlawed in an actiō of Det or Trespas, or in appeal of robbery &c.

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he shall reuerse such outlawrie by writ of Erroz &c. because he was in prison at the time of the outlawrie against him pronounced.

Also if a recouery be had by default against such a one that is in prison, hee shall auoide the iudgement by a writ of Erroz, for this that he was in prison at the time of such default made &c. and because that such matters of recorde shall not hurt them that be in prison, but that it shalbe reuersed &c. a multo fortiori. It seemeth that a matter in deed, that is to say, such discent had when he was in prison shall not hurt him &c. specially for this, that he may not goe out of prison to make continuall claime &c.

And in the same manner it seemeth to them where a man is out of the realme in the kings seruices for businesse of the Realme, & if a man be disseised when he is in the seruice of ỹ king, that such discent shall not hurt the disseisee, but for this that hee might not make continuall claime &c. it seemeth vnto them, that when hee commeth againe into England, hee may enter againe vpon the heire of the disseisor &c. For such a man shall reuerse an outlawrie that is pronounced against him during the time that hee is in seruice &c. Ergo a multo fortiori hee shall haue aide by the law in the other case &c.

Also others haue said, that if a man be out of the Realme, though he be not in the kinges seruice, if such a man being out of the Realme be disseised of landes or tenements within the Realme, and the disseisor die seised &c. the dis-

seisee

ſeiſée being out of the Realme, it ſéemeth vnto them, that when the diſſeiſée commeth into the Realme, that he may well enter vpon the heire of the diſſeiſor &c. and this ſéemeth vnto them for two cauſes: One is, that hée that is out of the realme, may not haue knowledge of the diſſeiſin made vnto him by vnderſtanding of the law, no more then that a thing done out of the Realme may be tryed within this Realme by the oath of xij. men, and to compell ſuch a man to make continual claime, which by the vnderſtanding of the Law can haue no knowledge or cogniſance of ſuch diſſeiſin made or done, this ſhalbe inconuenient, namely when ſuch a diſſeiſin is done vnto him, when he was out of the Realme, And the dying ſeyled was done when he was out of the realme, for in ſuch caſe he may not by poſſibility after the common preſumption make no continuall claime: But otherwiſe it ſhalbe if the diſſeiſée were within the realme at the time of the diſſeiſin, or at the time of the dying ſeiſed of the diſſeiſor &c. Another matter they alleadge for a proofe, that before the ſtatute of K. E. the 3. made the 34. yere of his raigne, by which ſtatute Noncl aime is out &c. the law was ſuch, that if a fine were leuied of certain lands or tenements, if any that was a ſtranger to the fine had right to haue & to recouer the ſame lands or tenements, if he came not and made his claime therof within a yere and a day next after the fine leuied, he ſhall be barred for euer, Quia dicebatur finis quod

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finē litibus imponebat, And that the law was such, it is proued by the statute of West. the 2. De donis condicionalibus, where it speaketh, if the fine be leuied of tenements giuen in the taile &c. Quod finis ipso iure sit nullus, nec habeant hæredes, aut illi ad quos spectat reuersio (licet plenæ ætatis fuerint, in Anglia, & extra prisona) necesse apponere clameū suum. So it is proued, that if a straunger that hath right into the tenemēts, if he were out of the realme at the time of the fine leuied &c. shall haue no damage though that such fine was matter of record: by greater reason it serueth vnto them that a disseisin & discent that is matter in deed, shal not so greeue him that was disseised when he was out of the Realme at the time of that disseisin, and also at the time that the disseisor died seised &c. but that he may well enter notwithstanding such discent. Also inquire if a man be disseised, & he arraine an Assise against the disseisor, & the recognitors of the assise challenge for the plaintife, & the Justices of assise will be aduised of their iudgements vntill the next assise &c. & in the mean season the disseisor dieth seised &c. yet the said sint of the assise shal be taken in law for the disseisee a continuall claim, insomuch that no default was in him &c.

Also inquire if an Abbot of a monastery die, & during the time of vacation, a man wrongfully entreth in certaine parcels of land of the Monasterie, claiming the land vnto him and his heires, and of that estate dieth seised, and

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the land diſcended vnto his heires, and after that an Abbot is choſen, & made Abbot of the Monaſtery, a queſtion is if the Abbot may enter vpõ the heire or not. And it ſæmeth to ſome that the Abbot may well enter in this caſe, for this that the Couent in time of vacation was no perſon able to make continual claime, for no more then be they perſonable to ſue an action, no more be they perſonable to make continual claim, for the Conẽt is but a dead body without head, for in time of vacation a grant made vnto them is void, & in this caſe an Abbot may not haue a writ of Entre vpon diſſeiſin againſt the heire, for this that he was neuer diſſeiſed. And if ỹ Abbot may not enter in this caſe, then he ſhal be put vnto his writ of Right, ỹ which ſhal be too hard for the houſe. By which it ſæmeth to them that the Abbot may wel enter &c.

Quære de dubijs, legem bene diſcere ſi vis,
Quærere dat ſapere quæ ſunt legitima vere.

¶ Releaſes.

RElеaſes be in diuers maners, that is to ſay: Releaſe of right that a man hath in lands or tenemẽts: and releaſe of actiõs reals & perſonals, & of other things. Releaſe of all the right that a man hath in lands or tenements &c. is commonly made in ſuch forme, or to ſuch effect. Nouerint vniuerſi per præſentes me A. B. remiſiſſe, relaxaſſe, & omnino de me & hæredibus meis quietũ clamaſſe E. de D. totum ius, titulum, & clameũ meũ quæ habui, habeo, vel quouiſmodo in futur̃ habere potero,

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de, & in vno meſuag. cũ ptiñ in P. And it is to be vnderſtood, that theſe words, (Remiſiſſe & quiet clamaſſ.) be of ſuch effect as theſe words, Relaxaſſe &c. And alſo theſe words which be cõmonly put in ſuch deeds of releaſes &c. that is to be vnderſtood, Quę quouiſmodo in futurũ habere potero, be as words void in the law, for no right paſſeth by a releaſe but the right that their leſſor hath at the time of his releaſe made: For if it be father & ſonne, & the father be diſſeiſed, & the ſon iuing his father releaſeth by his deed to his diſſeiſor all the right that he hath or may haue in the ſame tenements, without clauſe of warrantiſe &c. and after the father dyeth, the ſonne may lawfully enter vpon the poſſeſſiõ of the diſſeiſor, for this that he had no right in the land iuing his father, but the right diſcended vnto him by diſcent after the releaſe made by the death of his father. Alſo in a releaſe of all the right that a man hath in certaine lands, it behoueth vnto him to whom the releaſe is made in ſuch caſe, that he hath a freehold in the lands in deed or in the law, at the time of the releaſe made, for in euery caſe where he to whom the releaſe is made hath a freehold in deed or in law at the time of the releaſe made &c. the releaſe is good. Frankstenement in law is, as if a man haue diſſeiſed another, & therof died ſeiſed, by the which the tenements diſcend vnto his ſon, howbeit that his ſonne enter not in the tenements, yet he hath a frankstenement in the law, which by force of

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the discent is cast vpon him, and therefore the releas made is good enough. And if he take a wife so being seised in the law, howbeit that he neuer enter in deed, & dieth, his wife shall haue therof her dower. And in such case of releas of all his right, howbeit that he to whom the releas is made, ne hath any thing in the franktenement, neither in deed nor in law, yet the releas is good enough. As if the disseisor haue let land that he had by disseisin to an other for terme of his life, sauing the reuersion to him, if the disseisee or his heires release vnto the disseisor all the right &c. that release is good, for that that he to whom ꝯ release is made, had in him a reuersion at the time of the releas made.

In the same maner, if a leas be made to a mā for terme of life, the remainder vnto an other for terme of life, the remainder vnto the third in tayle, the remainder vnto the fourth in fee, if a stranger that hath the right vnto the land releas all his right vnto any of them in the remainder, such releas is good, for this that euery of them hath a remainder vested in himself, yet if the tenant for terme of life be disseised, & after he that hath right (the possession being in the disseisor) releas vnto one of them to whom the remainder was made, all his right &c. that releas is voide, for that that he ne had in him no remainder in deed, but all onely a right of a remainder at the time of the releas made.

And note, that euery releas made to him that hath a reuersion or remainder in deede, shall

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ſerue & help them that haue the franktenemẽt, aſwell to them to whom the releas is made, if the tenant haue the releaſe in his hand &c.

In the ſame maner a releas made to a tenãt for terme of life, or to a tenant in the taile, ſhall enure vnto them in the reuerſion, or to them in the remainder, as well as to the tenant of the franktenement, & ſhall haue as great aduantage of that, if that they may ſhew it.

And if there be lord and tenant & the tenant is diſſeiſed, and the diſſeiſée releaſeth vnto the diſſeiſor all the right that he hath in the ſeigniorie, or in the land, that releas is good, and the ſeigniorry is extinct. And if the goods of the diſſeiſée be taken, and of them the diſſeiſée ſueth a Replegiare againſt the lord, he ſhal compell the lord to auow vnto him, & if hée will auow vpon the diſſeiſor, then vpon the matter ſhewed, the auowrie ſhall be abated, for the diſſeiſée is tenant to them in right and in law.

Alſo if land be giuen to a man in the tayle, reſeruing vnto the donor & his heirs a certaine rent, if the donée be diſſeiſed, & after the donor releaſeth to the donée all the right that he hath in the land, and after the donée entreth into the land vpon the diſſeiſor: in this caſe the rent is gone, for this that the diſſeiſée at the time of the releaſe made was tenant in right, & in law vnto the donor, and the auowrie of fine force ought to be made vpõ him by the donor of the rẽt behind &c. But yet nothing of the right of the land, that is to ſay, of the reuerſion ſhall paſſe

passe by such releas, for this that the donee to whom the releas was made then had nothing in the land but only a right, & so the right of the land may not passe by such releas of the donee.

In the same maner it is, if a Lease be made to one for terme of life, reseruing to the lessor and to his heires certaine rent, if the lessee be disseised, & after the lessor releaseth to the lessee and to his heires, and after the lessee entreth, howbeit that in the case the rent is extinct, yet nothing of the rent passeth &c. Causa qua supra. But if it be very Lord and very tenant, and the tenant maketh a feoffement in fee, the which feoffee neuer became tenant to the Lord &c. if the Lord releas to the feoffor all his right &c. that release is void, for this that the feoffor hath no right in the land, and hee is no tenant in right to the Lord, but only tenant as for the auowrie to be made, and he shall neuer compell the Lord to auow vpon him, for the Lord may auow vpon the feoffee if he will. Otherwise it is where the very tenant is disseised, as in case aforesaid, for if the very tenant that is disseised holdeth of the Lord by knights seruice & dieth, his heire being within age, the Lord shall haue and seise the ward of the heire. And so he shall not haue the ward of the feoffor that made the feoffement in fee, and so it is a great diuersitie betweene the two cases.

Also, if a man enfeoffe an other in his land vpon trust, and to the intent that he shall performe his last will, and the feoffour occupieth

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the same at the will of his feoffées, and after the feoffées release by their deed vnto the feoffour all the right &c. This hath been in question if such release be good or not, and some haue said that such release is good, for this that no priuitie was betweene the feoffées and their feoffour, insomuch that no Lease was made after such feoffement by the feoffées and their feoffour to hold at their will &c. and some haue said the contrarie, & that for two causes. One is, that when such feoffements are made vpon confidence, to performe the will of the feoffor, that it shall be vnderstood by the Law that the feoffour by and by ought to occupie the land at the will of his feoffées, and so it is such maner of priuitie betweene them, as if a man make a feoffement to another person, and they incontinent vpon the feoffement will say & grant that the feoffour shall occupie the land at their will &c. An other cause they alleadge, that if such land be worth xl. s. by yeere &c. Then such feoffor shall be sworne in Assises and in other Inquests, in plées reals, and also in plées personels, of what great summes soeuer that the plaintifes will declare &c. And this is by the Common Law of the land: Ergo this is for a great cause, and the cause is that the Law will that such feoffors and their heires ought to occupie &c. And to take thereof the rent & all the profits, and all maner of issues and reuenues &c. as though the tenements were their owne without interruption of feoffées, notwithstanding

ving ſuch feoffements. Ergo the ſame law gi-
ueth a priuity betweén ſuch feoffors, and their
feoffées vpon confidence &c. For which cau-
ſes they haue ſaid, that the releaſe made by
ſuch feoffées vpon confidence to the feoffor, or
to his heires &c. ſo occupying the land &c. ſhall
be good enough &c. And this is the better opi-
nion as it ſéemeth, quære ſince the ſtatute 27.
H.8. cap. 10. Alſo releaſes after the matter in-
déed ſometime haue their effect by force to en-
large the eſtate of them, to whom the releas is
made: As if I let certaine land to a man for
terme of yéeres, by force whereof hée is poſſeſ-
ſed, and I releaſe vnto him all the right that
I haue in the land without more words ſet
or put in the déede, and deliuer vnto him the
déed: Then hee hath eſtate but for terme of
his life, and the cauſe is for this, that when
the reuerſion or the remainder is in a man the
which will enlarge by his releaſe the eſtate of
the tenant &c. hée ſhall haue no greater eſtate
but in the manner and fourme as if ſuch a lef-
ſour were ſeiſed in fée, and will by his déede
make eſtate to one in a certaine forme &c. and
deliuer vnto him ſeiſin by force of the ſame
déed, if in ſuch déed of feoffement there be no
word of inheritance &c. Then hee hath eſtate
but for terme of life &c. and ſo it is in ſuch
releaſe made by him in the reuerſion, or in
the remainder: For if I let land to a man for
terme of life, and after I releaſe vnto him
all my right without more ſaying in the re-

leaſe

lease, his estate is not inlarged. But if I release vnto him and to his heirs of his body engendred, then he hath fée taile. And if I releas vnto him & to his heires, then hath he fée simple. So it behoueth in such case to specifie in the deed, what estate he to whom the releas is made shal haue &c. And sometime a releas shal enure to let and put the right of him that maketh the releas to him to whom the releas is made: As a man is disseised, and he releaseth vnto the disseisor all the right that he hath: In this case the disseisor hath his right, so that where his estate before was wrong, now by the release it is lawful & right. But note well, that when a man is seised in fée simple of any lands or tenements, and an other will releas vnto him all the right that he hath in the same tenements, it needeth not to speak of the heires of him to whom the release is made, for this that he had fée simple at the time of the release made: for if the release were made to him and to his heires for one day, or for one hower, this shall be as strong vnto him in the law, as he had released to him and to his heires, for when his right was gone from him at one time by his release without any condition &c. to him that had fée simple, it is gone for euer. But where a man hath a reuersion or a remainder in fée simple at the time of the release made, there if he will release to the tenaunt for terme of yéeres, or for terme of life, or in the taile, it behoueth to determine the estate

that he to whom the release is made shall haue by force of the same release: For this that such releas goeth to inlarge the estate &c. of him to whom the releas is made: But otherwise it is where a man hath but a right vnto the land & had nothing in ꝑ reuersion nor in the remainder in deed: for if such a mā releas al his right to one that is tenant of the franktenement, all his right is gone, though that no mention be made of the heires of him to whom the releas is made. For if I let land to a man for term of life, if I after releas vnto him for to inlarge his estate, either it behoueth that I releas vnto him & to his heires of his body ingēdred, or to him and to his heires males of his body begotten, or by such semblable estate &c. or otherwise he hath no greater estate then he had before. But if my tenant for terme of life let the same land out to an other for terme of the life of his lessée, the remainder to an other in fe, now if I releas vnto him vnto whom my tenāt letted for terme of life, I shal be barred for euer though that no mention be made of his heires, for this that at the time of the releas made I had no reuersion but onely a right to haue the reuersion: For by such a releas with a remainder ouer that my tenant made, in this case my reuersion is discontinued, & such a releas shall inure vnto him in the remainder to haue aduantage of this, aswell as to the tenāt for terme of life, for to that intent the tenant for terme of life and he in the remainder be as one

tenant

tenant in the law, & be as if one tenāt were sole seised in his demeine as of fee at the time of such release made vnto him. Also if a man be disseised by two, if he release vnto one of thē he shall hold his fellow out of the lād, & by such release shal sole haue possessiō & estate in the lād. But if one disseisor infeoffe two in fee, & the disseisee release to one of them, this shall inure to both the said feoffees. And the cause of the diuersitie betweene these two cases, is apparant inough.

Also, if I be disseised, & the disseisor is disseised, if I release to the disseisor of my disseisor, my disseisor shall neuer haue Assise nor enter vpon his disseisor, for this that his disseisor hath my right by my release &c. And so it seemeth in this case, that if there were xx. disseisors ech after other, & I release to the last disseisor, he shal barre al the other of their actions & their title. And the cause is as it seemeth, for this, ỹ in many cases whē a man hath a lawful title to enter, though he enter not &c. he shal defeat al mean titles by his release &c. But this is not in euery case, as shalbe said afterward.

Also, if a man be disseised, the which hath a sonne within age, and dieth, & being the sonne within age, the disseisor dieth seised, & the land discendeth to the heire, and a straunger abateth, and after the sonne of the disseisee when he commeth vnto full age releaseth al his right &c. to the abatour. In this case the heire of the disseisor shal haue no Assise of Mordaunceſter against the abator, but he shal be barred of the

A file, for this that the abator hath the right of the sonne of the disseisée by his releas, & the entrie of the sonne was lawful &c. for this that he was within age at the time of the discent &c. But if a mã be disseised, & the disseisor maketh a feoffemẽt vpon condition, that is to say, to yeeld vnto him certaine rent, & for default of payment a reéntrie &c. if the disseisée releas to the feoffée vpon condition, yet this amendeth not the estate of the feoffée vpon condition, for notwithstanding such releas, yet his estate is vpon condition as it was before. In the same maner it is where a man is disseised of certain land, & the disseisor granteth a rent charge out of the same land, though that after the disseisée releaseth vnto ỹ disseisor &c. yet the rent charge abideth in his force: And the cause is in these two cases, that a man shall haue none aduantage by such release that shall be against his owne proper acceptance, & against his owne grant. And though that some haue said that where the entrie of a man is congeable vpon a tenant, if he releas to the same tenant, that this auaileth vpon the tenant so as he had entred vpon the tenant, & after infeoffed him &c. this is not true in euery case, for in the first case of these two cases, if the disseisée in fee enter vpon the feoffée vpon condition, & after infeoffeth him then the condition is all put aside & void. And in the second case if the disseisée enter & infeoffe him that graunted the rent charge, then is the rent charge auoyded. But it is not auoyded

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by any ſuch releaſe with an entry made &c.

Alſo, if a man be diſſeiſed by a childe within age, ꝯ which alieneth in fée, & the alienée dieth ſeiſed, & his heire entreth (being the diſſeiſor within age). Now it is in the electiō of the diſſeiſor to haue a writ of Dū fuit infra ætatē, or a writ of right againſt the heire of the alienée, & which writ ſoeuer he taketh of them, he ought to recouer by the law. And alſo hée may enter into the lād without any recouery, and in this caſe ꝯ entry of the diſſeiſée is takē away: but in this caſe if the diſſeiſée releaſe his right to the heire of the alienée, & after the diſſeiſor bringeth a writ of right againſt the heire of the alienée, & hée ioyneth the miſe vpon the clere right &c. the grād aſſiſe ought by the law to find that the tenant hath more clere right &c. then hath the diſſeiſour, for this that the tenant hath the right of ꝯ diſſeiſée, & his releas, which is more auncient & more clére right then the right of the diſſeiſor, for by ſuch releaſe, all the right of the diſſeiſée paſſeth vnto the tenant, and is in the tenant. And to this ſome haue ſaid, that in ſuch caſe where a man hath right to landes or tenements (but his entry is not lawfull) if hée releaſe vnto the tenaunt &c. then ſuch releaſe ſhall enure by way of extinguiſhment. And vnto this it may hée ſaid, that this is trueth vnto him that releaſeth, for by his releaſe hée hath diſmiſſed himſelfe cleane of his right as to his perſon: But yet the right that hée had may well paſſe and goe vnto the tenant by his releaſe.

release, for it should be inconuenient ẏ such an ancient right should be extinct al vtterly &c. for it is cōmonly said, that right may not die. But a releas that goeth by ẏ way of extinguishmēt against all persons, is where he to whō the releas is made, may not haue this ẏ vnto him is released. As if there be lord & tenant, & the lord releaseth vnto ẏ tenāt al the right that he hath in the lordship, or all the right ẏ he hath in the land &c. such a release goeth by way of extinguishment against al persons, for this ẏ the tenāt may not haue the same of himselfe. In the same maner is a releas made to ẏ tenāt of the land of a rēt charge, or of a cōmon of pasture, for it is that the tenant may not haue that that vnto him is released &c. So such releases goe away by extinguishmēt against all persons.

Also, to proue ẏ the grād assise ought to passe for the demādant in the case aforesaid, I haue heard often in the lecture vpō the stat. of west. the 2. that beginneth, In casu quādo vir amiserit per defaltam tenemtū qd' fuit ius vxoris suæ &c. that at the cōmon law before that statute, if a leas were made to a tenāt for terme of life, the remainder ouer in fee, & a stranger by a fained action recouer against the tenāt for terme of life by default, & after the tenāt dieth, hee in the remainder hath no remedy before the statute, for this that hee had no possession of the land, but if he in the remainder had entred vpon the tenāt for terme of life, and disseised him, and after the tenant entreth vpon him, & after

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the tenant for terme of life leeſeth by ſuch recouery had by default, and dieth: now hee in the remainder may well haue a writ of right against him that recouered, for this that ꝑ mise ſhalbe ioined only vpō the cleere right. And yet in this caſe the ſeiſin of him in the remainder was defeated by the entry of the tenant for terme of life. But peraduenture ſome will argue & ſay, that he ſhall haue no writ of right in this caſe, for this that when the mise is ioyned in ſuch maner, that is to ſay if the tenant haue more cleere right to the land in the maner as it is holden, then the demaundant hath in the maner as he demandeth, And for this that the ſeiſin of the demaundant was defeated by the entry of the tenāt for terme of life, then he hath no right in the maner as he demandeth. Vnto this it may be ſaid, that thoſe wordes (Modo & forma pro vt &c.) in many caſes be wordes of the maner of pleading, and no wordes of ſubſtance: For if a man bring a writ of Entry (In caſu prouiſo) of alienation made by the tenant in dower to his diſenheritance, and pleadeth of the alienation made in fee, and the tenant ſayth that hee aliened not in the maner as the demaundant hath declared, and vpon this they be at iſſue, and it is found by verdict that the tenāt aliened in the taile, or for terme of an others life, the demandant ſhall recouer, and yet the alienation was not in the maner as the demandant hath declared.

Alſo, if there be Lord and tenant, and the tenant

tenant holdeth of the lord by fealty onely, & the lord distraineth the tenãt for rent, & the tenant bringeth a writ of trespas against his lord for his cattel so taken, & the lord pleadeth that the tenãt holdeth of him by fealty & certaine rent, & for the rent behind he came to distrain &c. & demandeth iudgmẽt of the writ brought against him, Quare vi & armis &c. And the other saith that he holdeth not of him in the maner as he supposeth, & vpon this they be now at issue, & it is found by verdict that he holdeth of him by fealty tantũ. In this case the writ shal abate, & yet he held not of the lord in the maner as the lord had said, for the matter of the issue is, whether the tenant holdeth of him or not: For if he hold of him, though the Lord distraine for other services that hee ought not to haue, yet such a writ of Trespas Quare vi & armis &c. lieth not against the Lord but shall abate.

Also, in a writ of Trespas of beating, or of goods taken, if the defendant plead non culpable in the maner as the plaintife supposeth, & it is found that the defendant is culpable in an other towne, or at an other day, then the plaintife supposeth, yet he shall recouer: And in many mo other cases these wordes, that is to say, in the maner as the demaundant or the plaintife hath supposed, be no matter of substance of the issue: for in a writ of right where the mise is ioyned vpon the clere right, it is as much to say and to such effect, that is to wit, whether hath the more right, the tenant or

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the demandant to the thing so demanded &c.

Also, if a man be disseised, & the disseisor dieth seised &c. and his sonne entreth by discent, and the disseisée entreth vpon the heire of the disseisor, the which entrie is a disseisin &c. if the heire bring an Assise, or a writ of Right against the disseisée, he shall be barred: For this that when the graund assise is sworne, their oath is vpon the cléere right, and not vpon the possession &c. for if the heire of the disseisor had brought an Assise of Nouel disseisin, or a writ of Entre in nature of assise, & recouered against the disseisée, & sued execution, yet may the disseisée haue a writ of Entre in the Per against him of the disseisin made vnto him by his father, or he may haue against the heire a writ of Right: But if the heire ought to recouer against the disseisée in ỳ case aforesaid by a writ of right, then all his right shal be cléerely gone, for this that a finall iudgemẽt should be giuen against him, which should be against reason where the disseisée hath more cléere right &c.

And know ye my son, that in a writ of Right after this that the fower Knights be chosen in the graund Assise, then there is no greater delay then in a writ of Formedon, after this that the parties be at issue &c. And if the mise bée ioyned vpon battaile, then there is lesse delay.

Also, a release of all the right &c. in some case is good, made vnto him that is supposed tenant in the law, though he haue nothing in the tenements, as in a Prȩcipe quod reddat, if

if the tenant alien the land hanging the writ, and after the demãdant releaſed to him al his right, that releaſe is good, for this that he is ſuppoſed to be tenant by the ſuit of the demandant, & yet he hath nothing in the land at the time of the releaſe made. In the ſame maner it is if in a Præcipe quod reddat the tenãt vouch, & the vouchée enter into the garranty, if after the demaundant releas to the vouchée all his right &c. this is good inough, for this that the vouchée after this that he hath entred into the garranty, is tenant in law to the demandant.

Alſo, as to releaſes of actions reals, and actions perſonels, it is ſo that ſoms actions be mixt in the realtie and in the perſonaltie, as if an action of waſt be ſued againſt the tenant for terme of life, this action is in the realtie, for this that the place waſted ſhall be recouered. And alſo it is in the perſonaltie, for this that the treble dammage ſhall be recouered for the wrong & waſt done by the tenãt, & for this in this action a releaſe of actions reals is a good plée in barre, and ſo is a releaſe of actions perſonels. In the ſame maner it is in Aſſiſe of Nouel diſſeiſin, for this that it is mixt in the realty and in the perſonalty. But if ſuch Aſſiſe be arraigned againſt the diſſeiſor, the tenant of the diſſeiſor may plead a releaſe of all actions perſonels for to barre the Aſſiſe, but not a releas of actiõs reals, for none ſhal pled a releas of actions reals in aſſiſe, but the tenants &c.

Alſo, in ſuch actions that ought to be ſued

againſt

against the tenant of the franktenement, if the tenant haue a releas of all actions reals of the demaundant made vnto him before the writ purchased, & he pleadeth it, this is a good plee for the demandant to say that he that pleadeth that plee had nothing in the franktenement at the time of the releas made, for that he had no cause to haue action real against him.

Also, in such case where a man may enter in lands or tenements, he may haue of this an action reall which is giuen vnto him by the law against the tenant. As in this case the demandant releaseth to the tenant all mauer actions reals, yet this taketh not away the entrie of the demaundant, but the demandant may well enter, notwithstanding such release, for this that nothing is released but the action &c. In the same maner it is of things personels: As if a man wrongfully take my goods, if I release vnto him all actions personels, yet I may by the Law take my goods out of his possession.

Also, if I haue cause to haue a writ of Detinue of my goods against an other, though that I release vnto him all actions personels, yet I may take my goods out of his possession, for this that no right of goods is released to him but onely the action &c. Also, if a man be disseised, and the disseisour maketh a feoffment vnto diuers persons to his vse, and the disseisour continually taketh the profites &c. and the disseisée releaseth vnto him all actions reals,

reals, and after he ſueth againſt him a writ of Entre in nature of aſſiſe, becauſe of the ſtatute, for this that he taketh the profites. Inquire how the diſſeiſour ſhall be holpen by the ſaid releas, for if hee will plead the releas generally, then the demaundant may ſay that he had nothing in the franktenement at the time of the releas made, and if he plead the releas ſpecially, then it behoueth him to knowledge a diſſeiſin, and then may the demandant enter in the land &c. by his conſance of the diſſeiſin &c. But peraduenture by ſpecial pleading he may be barred of the action that he ſueth &c. though that the demandant may enter &c.

Alſo if a man ſue appeal of Felony of the death of his anceſtor againſt an other, though the appellant releas vnto the defendant all maner actions reals and perſonels, this ſhall not helpe the defendant, for this that this appeal is not an action reall, inſomuch that the appellant ſhall not recouer any realty, nor ſuch appeal is no action perſonall, inſomuch that the wrong was vnto his auncestor and not vnto him: but if he releas to the defendant all maner of actions, then it ſhall be a good barre in appeal. And ſo a man may ſee that a releas of all maner of actions, is better then a releas of actions reals and perſonels &c.

Alſo, in appeal of Robbery, if the defendant will plead a releas of the appellant of all actions perſonels, this ſeemeth no plee, for an action of appeal where the appellant ſhall haue

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iudgement of death &c. is more high then an action personall, and it is not properly said an action personall, and therefore if the defendant will haue the release of the appellant to barre him of the appeale, it behoueth him to haue a release of all manner of Appeales, or a release of all manner of actions, as it seemeth &c. But in appeale of maihem a release of all manner of actions personals is a good plée in barre, for this that in such an action he shall recouer but damages.

Also, if a man be outlawed in an action personall by proces of the originall, & bring a writ of error, if hée at whose suit hée was outlawed will plead against him a release of actions personals, this seemeth no plée, for by the said action he shall recouer nothing in the personaltie, but all onely to reuerse the outlawry: but a releas of a writ of error shalbe a good plée &c.

Also, if a man recouer det or damage, & he release to the defendant all manner of actions, yet hée may lawfully sue execution by Capias ad satisfaciendū, or by Elegit, or by Fieri facias, for execution by such writs may not be said an action, but if after a yéere and a day the plaintife will sue a Scire facias to haue execution &c. then it seemeth a release of all actions shall be a good plée in barre, but some haue thought the contrarie, insomuch that the writ of Scire facias is a writ of execution, and is to haue execution. But insomuch that vpon the same writ the defendāt may plead diuers matters

ters after the iudgement gue to put him from execution, as vtlawry & diuers other &c. therefore it may well be said actiõ &c. & I trow that in a Scire facias out of a fine, a releas of all maner of actiõs is a good plee in bar, but where a mã hath recouered det or damage & it is accorded betweene them that the plaintife shalbe put out from action, then it behoueth that ỹ plaintife make a releas to hun of all maner actions.

Also if a man releas to another al maner demands, this is the most best releas that he to whom the releas is made can haue, and most shall enure to his aduantage, for by such releas of all maner of demands, all maner of actions reals & personels, and actions of appeales, be gone and extinct, and all manner of executions be gone & extinct: and if a man hath title to enter in any lands or tenements by such releas his title is gone. And if a man haue rent seruice, or rent charge, or common of pasture &c. by such releas of all maner demands to the tenant of the land, whereof the seruice or the reentry is going out, or in what land souer the common be, the seruice and rent, and the common is gone and extinct &c.

Also, if a man release to an other all maner quarrels, or all controuersies or debates betweene them. Enquire to what matter, and to what effect such words doe extend.

Also if a man be bound by his deed to another in a certaine summe of mony to pay at the feast of S. Mich. then next following &c. if the

obligee

obligée before the ſaid feaſt, releas to the obli-
gor all actions, hee ſhall be barred of the duetie
for euer, an yet he might haue no action at the
time of the releas made. But if a man let land
to an other for terme of yéeres, to yéeld at the
feaſt of S. Which next inſuing xl. s. & before the
ſame feaſt he releaſeth to the leſſee all actions,
yet after the ſame feaſt hee ſhall haue an action
of debt for the non payment of the xl. s. not-
withſtanding the ſaid releaſe. Studie the
cauſe of the diuerſity betweene theſe two caſes.

Alſo, where a man will ſue a writ of right,
it behoueth that he plead of ỹ ſeiſin of himſelfe
or of his anceſtors, & alſo that the ſeiſin was in
time of the ſame king, as he pleadeth in his plée,
for this is an ancient law vſed, as it appea-
reth by report of a certaine plée, in ſuch forme
as inſueth. Sir I. Barrey brought a writ of
right againſt Raunold Aſhington, & demaun-
ded certaine tenemẽts &c. the miſe was ioined
in the banke, & the originall & the proces were
ſent before Iuſtices errãts where the parties
came, & the xij. knights were ſworne without
challenge of the parties to be allowed, for this
that the electiõ was made by aſſent of the par-
ties, with the 4. knights, & the oath was ſuch.
That I ſhall ſay truth &c. whether R. of A.
haue more right to hold the tenements that I.
Barrey demanded againſt him by his writ of
right, or Iohn to haue the tenemẽts as he de-
mandeth, & for nothing to let to ſay the trueth,
as God mée help &c. without ſaying to their

knowledge, & such oath shalbe made in attaint, and in bataile, & in waging of Law, for those do euery thing vnto an end: but I. B. pleaded of the disseisin of one Rafe his auncester in the time of king H. & Rainold vpō the mise ioyned tendred halfe a marke for the time &c. & vpon this Herle Iustice said to the grand assise, after that they were charged vpon the cleere right: Goodmen, Rainold gaue halfe a marke to the king for that time, to the intent that if hee finde that the auncester of I was not seised in time that the demandant hath pleaded, you shall inquire no further vpon the right, and for this ye shall say to vs whether the ancester of I. Rafe by name, was seised in the time of king Henry as he hath pleaded or not, & if yee find that hee was not seised in the time, ye shal inquire more and if he find that hee was seised, then inquire farther of the right: and after the grand assise came with their verdict & said that Rafe was not seised in the time of king Henry whereby it was awarded that Rainold should holde the tenements against him demanded to him and to his heires quite of I. Barrey & his heires, to the remnant, and John in the mercy.

Confirmation.

A Deed of confirmation is most commonly in such forme, or to such effect. Nouerint vniuersi &c. me A. de B. ratificasse approbasse & confirmasse C. de D. statū & possessionē quos habeo, de, & in vno messuag. cum pertin in N. And in some case a deed of confirmation is good & vail-

able, where, in the same case a deed of releas is not good nor vailable. As I let land to a man for terme of his life, the which letteth the same land to an other for xl. yeres, by force of the which he is possessed, if I by my deed confirme the state of the tenant for terme of yeres, & the tenant for terme of life dieth during the terme of yeres, I may not enter in the land during ỹ same term, yet if I by my deed of releas haue released to the tenant for terme of yeres in the life of the tenāt for terme of life, the releas shal be void, for this, that then no priuitie was betweēn me & the tenant for terme of yeres, for a releas is not auailable to the tenāt for term of yeres, but where a priuity is betweēn him and him that releaseth. In the same maner it is if I be disseised, & the disseisor maketh a releas to an other for term of yeres, if I releas vnto the termor, that is void: but if I cōfirme the estate of the termor, that is good & effectuall. Also, if I be disseised, & I confirme the state of the disseisor, thē he hath a good & rightfull estate in fee simple, though that in the deed of confirmation no mention is made of his heires, for this that he had fee simple at the time of the cōfirmation, for in such case if the disseisee confirme the state of the disseisor, to haue & to hold to him for term of his life, yet the disseisor hath fee simple, & is seised in his demesne as of fee, for thus that whē his estate was cōfirmed, he had fee simple, & in such deed he may not chāge his estate without entrie vpō him &c. In ỹ same maner it is, if the

eſtate be cõfirmed foꝛ term of a day, oꝛ foꝛ terme of an houre, he hath a good eſtate in fée ſimple, foꝛ this, that his eſtate in fée ſimple was once cõfirmed, foꝛ cõfirmare, idẽ eſt qđ firmũ facere.

Alſo, if ij. be diſſeiſoꝛs, & the diſſeiſée releaſeth to the one, he ſhall hold his fellow out of the land: But if the diſſeiſée confirme the eſtate of one without moꝛe ſpéech in the déed, ſome ſay that he ſhal not hold his fellow out, but he ſhal hold iointly with him, foꝛ this, ỹ nothing was confirmed but his eſtate that was ioint, & foꝛ this ſome haue ſaid, that if ij. iointenãts be, & the one confirmeth the eſtate of the other, that he hath but a ioint eſtate as he had befoꝛe. But if he haue ſuch woꝛds in the déed of cõfirmation, to haue & to hold to him & to his heires all the tenements wherof mention is made in the confirmation then he hath eſtate ſole in the tenemẽts, & therfoꝛe it is a good & a ſure thing in euery cõfirmation to haue theſe woꝛds, to haue & to hold the tenements &c. in fée, oꝛ in fée taile, oꝛ foꝛ terme of life, oꝛ foꝛ terme of yéeres after oꝛ as the cauſe oꝛ matter is: foꝛ to thintent of ſome, if a man let land to an other foꝛ terme of life, and after he confirmeth his eſtate by theſe woꝛds, to haue & to hold his eſtate to him & to his heires, this confirmation as concerning his heires is void, foꝛ his heires cannot haue his eſtate which was but foꝛ terme of life, but if he cõfirme his eſtate by theſe woꝛds to haue the ſame land to him & to his heires, this confirmation maketh fée ſimple in this caſe to him

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in the land, for this, that these words, to haue & to hold &c. goeth to the land, & not to the estate that he hath &c. Also if I let certein land to a woman sole for terme of her life, the which taketh a husband, & after I confirme the estate to the husbād & to the wife for terme of their two liues, in this case ỹ husbād holdeth not iointly with the wife, but holdeth in the right of his wife for terme of his life: but this cōfirmation shal enure to the husbād by way of remainder for terme of his life, if he suruiue his wife. But if I let land to a womā sole for terme of yeres, which taketh a husband, & after I cōfirme the estate to the husband & the wife, for terme of both their liues, in this case they haue ioint estate in the franktenemēt of the land, for this that the wife had no franktenement before.

Also, if a Parson of a church charge the glebe of his Church by his deed, & the Patron & the Ordinary confirme the same grant, & al that is comprised within the same grant, ỹ same grant shall be in his strength after the purpose of the same graunt: but in such case it behoueth that the patron haue fee simple in the aduowson, for if he haue estate in ỹ aduowson for term of life, or in tail, then the grant shal stand but during his life, & ỹ life of the parson that granted it &c.

Also, if a man let land for terme of life, which tenant for terme of life chargeth the land with a rent in fee, and he in the reuersion confirmeth the same graunt, this charge is good inough & effectual. Also if there be a perpetuall Chātry

whereof the ordinary hath nothing to meddle nor to do, the patron of the chātry, & the chaplain of the same chātry may charge the chātry with a rent charge in perpetuity. Also in some case these verbes Dedi & cōcessi, haue the same effect in substāce, & shal enure to the same intēt as this verb cōfirmaui: as if I be disseised of a plough land, & after I make such a deed &c. Sciant prēsētes &c. qd' dedi to the disseisor the said plough land &c. And if I deliuer only the deed to him without liuery of seisin of the land, that is a good cōfirmation & as strong in the law, as if he had in the deed this verbe Confirmaui &c.

Also, if I let land to a man for term of yeres, by force of which he is possessed, & after I make him a deed &c. Quod dedi, vel concessi &c. the same land to haue for terme of his life, & deliuer him the deed, then by & by he hath estate in the land for term of his life, & if I say in the deed, to haue to him & to his heires of his body ingendred, he hath estate in the taile, & if I say in the deed, to haue & to hold to him & to his heires, he hath estate in fee simple, for this shall enure to him by force of cōfirmatiō to inlarge his estate. Also if a man be disseised, & ỹ disseisor dieth seised, & his heire in by discent, after the disseisee & the heire of ỹ disseisor make iointly a deed to an other in fee, & liuery of seisin vpō this is made, as to the heire of the disseisor that inscaleth the deed, the tenemēts passe by ỹ same deed by way of fessement, & as to the disseisee ỹ inscaleth the same deed, this shal not enure by ỹ way of confirmation:

firmation: But if the disseisée in this case bring a writ of Entry in the (Per & Cui) against the alienée of the heire of the disseisor, enquire how he shall plead the deed against the defendant by way of confirmation &c. And know this my child, that it is one of the most honorable, laudable, & profitable things in our Law, to haue the science of well pleading, in actions reals & personals, and for this I counsaile thée, especially to set thy courage & care to learne that.

Also if there be Lord, and tenant, & the Lord confirmeth the estate that the tenaunt hath in the tenemẽts, yet the seigniorie wholy abideth to the Lord as it was before. In the same manner it is if a man haue a rent charge out of certeine land, and he confirmeth the state that the tenant hath in the land, yet abideth to the confirmor the rent charge. In the same manner it is if a man haue cõmon of pasture in the land of any other, if hee confirme the state of the tenant of the land, nothing shall depart from him of his common, but this notwithstanding the common abideth to him him as it was before.

But if there be Lord & tenant, which holdeth of his Lord by seruice of fealty & xx.s. of rent, if the lord by his deed confirme the estate of the tenant to hold by xij. d. j.d. or by an ob. in this case the tenant is discharged of all other seruices, and shall yeild nothing to the Lord but that that is compriſed within the same confirmation, yet if the Lord will by the deed of confirmation, that the tenant in this

case ought to yéeld to him a Hauke or a Role yeerely at such a feast &c. this reseruation is void, for this that hée reserueth to him a new thing that neuer was parcell of the seruices before the confirmation, and so the Lord may abridge the seruices by such confirmation, but he may not reserue to him a new seruice &c.

Also, if there be lord, meine, & tenant, & the tenant is an Abbot that holdeth of the meine by certaine seruices yeerely, the which hath no cause to haue acquitãce against his meine for to bring a writ of meine &c. in this case if the meine confirme the estate that the Abbot hath in the land, to haue and to hold the land vnto him & his successors in frankalmoigne or frée almes &c. in this case this confirmatiõ is good, & then the Abbot holdeth of the meine in frãkalmoign: and the cause is for this, that no new seruice is reserued, for all the seruices specially specified be extinct, and nothing is reserued to the meine, but the Abbot shall hold the land of him as it was before the confirmation', for hée that holdeth in frankalmoigne ought to doe no bodily seruice, so that by such confirmation it appeareth that the meine shal not reserue vnto him no new seruice, but that the lands shall be holden of him as it was before, & in this case the Abbot shall haue a writ of Meine if hée be distrained in his default by force of the said cõfirmation, where percase hee might not haue such a writ before &c.

Also if I be seised of a villein, as of a villein in grosse, & an other taketh him out of my pos-

ſeſſion claiming him to be his villein, whereas he hath right to haue him as his villeine, & after I confirme the eſtate to him that he hath in my villeine, this confirmation ſeemeth voide, for this, that none may haue poſſeſſion of a mã as of a villeine in groſſe, but hee which hath right to haue him as his villeine in groſſe, and inſomuch that hée to whom the confirmation was made, was not ſeſed of him as of his villein at the time of his confirmation, ſuch confirmatiõ is void: but in this caſe if ſuch words where in the déed, Sciatis me dediſſe & confirmaſſe tali &c. talem villanum meum, this is good, but this ſhall enure by force and way of graunt, and not by way of confirmation &c.

Alſo ſometimes theſe verbes (Dedi & conceſſi) enure by way of extinguiſhment of the thing guen or granted, As a tenant holdeth of his lord by certaine rent, & the lord by his déed granteth to the tenant & to his heirs ỹ rent &c. this ſhall enure to the tenant by way of extinguiſhmẽt, for by this grant the rent is extinct. In the ſame maner it is where one hath a rẽt charge of certain land, & he granteth to the tenant of the land the rent charge, and the cauſe is for this, that it appeareth by the wordes of the grant that the will of the donor is, that the tenant ſhall haue the rent &c. inſomuch that he may haue no rent out of his own land, for this déed ſhalbe vnderſtood & taken for the moſt aduantage & auaile of the tenãt that it may be taken, & for that, it is by way of extinguiſhment.

Alſo

Also, if I let land to a mā for terme of yeres, and after I confirme his estate without moe wordes put in deed, hee hath no greater estate but for terme of yeeres, as he had before: But if I release to him my right that I haue in the lād without mo wordes put in the deed, he hath estate of franktenement. And so mayest thou my child vnderstād great diuersities betweene releases & confirmations. And if I be within age, & let land to one for terme of xx. yeres, and he graunteth the land for terme of x. yeres, so that he graunteth but parcell of the terme: In this case when I am of full age, if I release vnto the grauntee of the lessee &c. this release is void, for this, that there is no priuitie betweene him & me. But if I cōfirme his estate, then this confirmation is good: But if my lessee graunt all his estate to an other, then my releas made to the grantee is good & effectuall.

Also if a man grant a rent charge out of his land to another for terme of his life, & after I cōfirme his estate in the same rent, to haue & to hold to him in fee taile, or in fee simple, this cōfirmation is void, as to the enlarging of his estate, for this, that he that cōfirmeth had no reuersion in the rent: But if a mā seised in fee of rent seruice, or of rent charge, & he grāteth the rent to an other for terme of life, & the tenant attorneth, & after he cōfirmeth the estate of the grantee in fee taile, or in fee simple, this confirmation is good as to enlarge his estate after the wordes of the deed of confirmation, for this

that

that he that confirmed the estate at the time of the confirmation had the reuersion of the rent &c. But in this case aforesaid, where a man granteth a rent charge to an other for terme of life, if he will that the grauntee shal haue estate in the tail, or in fee, him behoueth that the deed of the grauntee of the rent charge for terme of life, be surrendred or cancelled, & then to make it a new deed of such a rent charge, to haue and to take to the grauntee in the taile, or in fee. Ex paucis dictis intendere plurima possis.

¶ Attournement.

ATtournement is, if there be Lord & tenant, & the Lord will graunt bi his deed the seruice of his tenant to an other for terme of yeres, or for terme of life, or in taile, or in fee, him behoueth that the tenant attourne to the grauntee in the life of the grauntor by force & vertue of the graunt, or otherwise the graunt is void. And attournement is none other thing in effect, but when the tenant hath hard of the graunt made by his Lord, that the same tenant by word agree to the said graunt, as to say to the grauntee, I agree me to the graunt made to you, or I am well content of the graunt made to you &c. But the more common attournement is to say, Sir, I attourne to you by force of the same grant, or I become your tenant &c. or to deliuer vnto the grauntee j.d. ob. or farthing, by way of attornement &c.

Also, if a man be seised of a manour, which manor is parcel in demeine, & parcel in seruice

if

if he will alien such a manor to an other, it behoueth that by force of the alienation all the tenãts that hold of the alienor (as of this manor &c.) attourne to the alienée, or otherwise the seruices abide continually in the alienor, except tenãts at will, for it néedeth not that tenãts at wil attorne vpõ such alienatiõ &c. for this that the same lands or tenemẽts ỹ they hold at will do passe to ỹ alienée by force of such alienation.

Also, if there be Lord and tenant, and the tenant letteth the tenements to a man for terme of life, the remainder to an other in fée, if the Lord grant the seruices to the tenãt for terme of life in fée, in this case the tenant for terme of life hath fée in the seruices, but the seruices be put in suspence during his life, but his heires shall haue the seruices after his death, and in that case it néedeth not attournement, for by the acceptance of the déed of him that ought to attourne, this is attournement in him selfe &c. But where the tenant hath as great and high estate in the tenements as the Lord hath in the seigniory, in such case if the Lord graunt the seruice vnto the tenant in fée, this enureth by way of extinguishment, Causa patet.

Also, if there be Lord & tenant, & the tenant maketh a leas to one for term of life, sauing the reuersion vnto him, if the Lord grant the seigniory to the tenãt for terme of life in fee, in this case it behoueth that he in the reuersiõ attorne to the tenãt for term of life by force of ỹ grant, or otherwise the grant is void, for this that he

in the reuersion is tenant to the Lord.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by twenty maner of seruices, and the Lord graunteth his seigniorie to an other, if the tenant pay or do any of the seruices to the grauntee, this is a good attournement, of and for the seruices, though that the tenants intent was to attourne but of the same parcell, for this that the Seigniorie is an whole thing, though that there be diuers manner of seruices that the tenant ought to do.

Also, if there be Lord and tenant, and the tenant holdeth of the Lord by many maner of seruices, and the Lord graunteth the seruices to an other by fine, if the grauntee sue a Scire facias out of the same fine, for any parcel of the seruices, and had iudgement to recouer, this iudgement is a good attournement in the law for all the seruices.

Also, if the Lord of the rent graunteth the seruices vnto an other, and the tenant attorneth by a peny, and after the grauntee distraineth for rent behinde, and the tenant to him maketh rescous: In this case the grauntee shall haue no Assise of the rent, but hee shall haue a writ of Rescous, for that the gift of the penie was but by way of attournement. But if the tenant had giuen vnto the grauntee the said peny as parcell of the rent, or a haife penie, or a farthing, by way of seisin of the rent, then this is a good attournement, and also it is

is a good seisin to the graunteé of the rent, and then vpon such rescous the graunteé shal haue an Assise &c.

Also, if a man let tenements for terme of yéeres, by force of which the lessée is seised, and after the Lord graunteth by his déede the reuersion to an other for terme of life, or in taile, or in fee, it behoueth him in this case that the tenant for terme of yéeres attourne, or otherwise nothing passeth to such graunteé by such déed. And if in this case the tenant for terme of yéeres attourne to the graunteé, then by and by passeth the franktenement to the graunteé by such attournement, without any liuery of seisin &c. for this, if any liuery shall be made, or néedeth to be made in such case, then the tenant for terme of yéeres shall be at the time of the liuery of seisin out of his possession, which should be against reason.

Also, if land be let to a man for terme of yéeres, the remainder to an other for terme of life, reseruing to the lessor a certain rent by the yéere, and liuery of seisin is made vpon this to the tenant for terme of yeres, if he in the reuersion in such case grant his reuersiō to another &c. and the tenant that is in the remainder after the term of yeres attourneth, this is a good attournement, and he to whom the reuersion is granted, by force of such attournement shall distraine the tenant for terme of yéeres for the rent due after such attournement, though the tenāt for terme of yeres neuer attourned vnto him,

him, and the cause is for that, where the reuersion is dependant vpon the state of franktenement, it sufficeth that the tenant of the franktenement attorne vpon such graunt of reuersion &c. And it is to wit, that where a lease for terme of yeres, or for terme of life, or a gift in the taile is made to any man, reseruing to such a lessor or donor certaine rent, if such a lessor or donor grant his reuersion to another, and the tenant of the land attorne, the rent passeth to the grantee, though in the deed of the graunt of reuersion, no mention is made of the rent, for this that the rent is incident to the reuersion in such case, & not eo nomine, for if a man will graunt the rent in such case vnto an other, reseruing to him the reuersiõ of the land though the tenant attorne to the grauntee, this shalbe but a rent secke &c.

Also, if a man let land to an other for terme of life, & after such lease he confirmeth by a deed the estate of the tenant for terme of life, the remainder to an other in fee, and the tenaunt for terme of life accepteth the deed, then is the remainder indeed to him to whõ the remainder was giuen or limitted in the same deed, for by the acceptance of the tenant for terme of life of the same deed, this is a grant of him, & so an attournement in law: But yet he in the remainder shal haue none actiõ of waste, nor other benefit by such remainder, but if he haue the same deed in his hand by which the remainder was graunted vnto him, & for this that in such case

the

the tenant for terme of life will retaine to him the deed, to the intent that he in the remainder shall not haue an action of waste against him, for this that he may not come to haue the possession of the deed &c. It shall be good in such case for him in the remainder, that a deede indented be made by him that will make the confirmation, and the remainder ouer &c. And he that maketh such confirmation deliuer a part of the Indenture to the Tenaunt for terme of life, and the other part to him that hath the remainder, and then he by shewing of the part of the Indenture, may haue an action of waste against the tenant for terme of life, & also other aduantage, that he in the remainder may haue in such case.

Also, if two Jointenants be, which let land to an other for terme of life, yeelding to them and their heires a certaine rent by yeere: In this case if one of the two Jointenants in the reuersion release to the other Jointenants in the same reuersion, this release is good, and he to whom the release is made, shall haue only the rent of the tenant for terme of life, and shall haue a writ of waste against them, though he neuer attorned by force of such release. And the cause is, for the priuitie that once was betweene the tenant for terme of life, and them in the reuersion.

In the same manner, and for the same cause it is, where a man letteth land to an other for terme of his life, the remainder to an other

for

for terme of his life, reseruing the reuersion to the lessor, in this case if he in the reuersion releas to him in the remainder &c. & to his heires all his right &c. then hee in the remainder hath a fee &c. and shall haue a writ of waste against the tenant for terme of life without any attornement of him &c.

Also, if a lease be made for terme of life the remainder vnto an other in the taile, the remainder ouer to the right heires of the tenant for terme of life, in this case if the tenaunt for terme of life grant his remainder in fee to another by his deed, the remainder by and by passeth by his deed without any other attornemẽt. For if any ought to attorne in this case, it should be ỹ tenãt for terme of life. And it were in vaine that he attorn vpõ his owen grant &c.

Also, if there be Lord & tenant, and the tenant holdeth of the Lord by certaine rent and knights seruices, if the Lord grant the seruices of the tenant by fine, the seruices be by and by in the graunte by force of the fine, but yet the Lord may not distraine for any parcell of his seruices without attornement. But if the tenant die his heire being within age, the lord shal haue the ward of the body of the heire and of the land &c. howbeit that he neuer attorned. For this that the seigniory was in the graunte maintenant by force of the fine.

And also in some case if the tenant die without heire, the Lord shall haue the tenancy by way of Eschete. In the same maner it is if a

man grant the reuersion of his tenāt for terme of life to an other by fine, the reuersion passeth presently to the grauntée by force of the fine, but the grantée shall neuer haue action of wast without attornement &c. But yet if the tenant for terme of life alien in fée, the grauntée may enter &c. for this that the reuersiō was in him by force of the fine, & such alienation was to his disinheritance. But in this case where the lord graunteth the seruices of his tenaunt, by fine, if the tenāt die, his heirs being of ful age, the grantée by the fine shal not haue the reliefe, nor neuer shall distraine for the reliefe, except there had bēen some attornement of the tenant that dyed &c. for of such thinges that lye in distresse, vpon the which a writ of Replegiare is sued &c. a man ought to auow the taking good and righteous &c. there ought to be attornement of the tenant, and howbeit that the grant of such seruices be by fine. But to haue ward of landes & tenements so holden during the nonage of the heire, or them to haue by way of escheat, there nēedeth not any distresse &c. but an entry in the land by force of ỹ right of the seignioxie that the grantée hath by force of the fine.

Also, in auncient Boroughes or Cities where tenements within the same boroughes or Cities bēene deuiseable by testament by the custome and the vse &c. if in such borough or Citie a man be seised of rent seruice or of rent charge, and he deuiseth such rent or seruice to an-

an other by his testamēt and dieth &c. In this case he to whom the deuise is made may distrain for the rent of the seruices behind, howbeit that the tenant neuer attourned. In the same maner it is where a man letteth such tenements deuisable to an other for terme of life, or for terme of yéeres, & deuised the reuersion by his testamēt to an other in fée, or in fée taile, and dieth, and anon after that the tenant maketh wast, he to whom the deuise was made shall haue a writ of wast: howbeit that the tenant neuer attourned, and the cause is for this that the will of the deuisor made by the testament, shall be perfourmed after the intent of the deuisor, and if the effect of this should lie vpon the attourning of the tenant &c. then percase the tenant would neuer attourne, and then the wil of the deuisor should neuer be perfourmed, and therfore the deuisée shall distrain or haue an action of Wast without attournement. For if a man deuise such tenements to an other by his testament (habend' sibi imperpetuum) and dieth, and the deuisée entreth, he hath a fée simple, Causa qua supra, and yet if a déed of feoffement were made to him by the deuisor of the same tenements (habendum & tenend' sibi imperpet') if liuery and seisin were neuer thereupon made, he shal haue none estate but for terme of life &c.

Also, if a man seised of a Manour which is parcell in demeane, and parcell in seruices, and thereof be disseised, but the tenant

which holdeth of the manor, neuer attourneth to the disseisor in this case, howbeit that the disseisor die &c. and his heire is in by discent, yet may the disseisor distrain for the rent being behind, & haue the seruice: But if the tenants come to the disseisor & say, we become your tenants &c. or otherwise make attournement to him &c. and after the disseisor dieth seised &c. then the disseisée may not distraine for the rent, for this that al the manor discēded to the heire of the disseisor. But if one hold of me by rent seruice which is a seruice in grosse, & an other that no right hath, claimeth the rent and receiueth and taketh the same rent of my tenant by cohersion of distresse, or by other forme, and so disseiseth me by taking such rent, howbeit that such a disseisor die seised by such taking of the rent, yet after his death I may well distraine for the same rent being behind before the death of the disseisor and after his death, & the cause is this, that such is not my disseisor but by election at my will, for howbeit that he took the rent of my tenant, I may at all times distrain my tenant for the rent behind &c. so it is to me but as if I will suffer the tenant to be by so much time behind of paymēt to me of the same rent, for the payment of my tenant to an other to whom he ought not to pay, is no disseisin to me, nor shall not put me out of my rent, without my will and election, for howbeit that I may haue Assise against such a taker &c. yet this is at my election if I will take him as my

disseisor

disseisor or not, so that such discents of rents in grosse ne putteth not out the Lords from their distresse, but that at each time they may well distraine for the rent behind: And in this case if after the deceale of him that so wrongfully took the rent, I graunt by my deed the seruices to an other, and the tenant attourneth, this is good ynough, & the seruices by such graunt & attournement, incontinent be in the grauntee &c. But otherwise it is where the rent is parcell of the manour, and the disseisor dieth seised of the whole manor, as in the case beforesaid.

Discontinuance.

DIscontinuance is an auncient word in the law, and hath diuers significations &c. but as to one intent it hath such a signification, that is to say, where a man hath aliened to an other certaine lands or tenements and dieth, and another hath right to haue the same lands or tenements, but he ne may enter in them, because of such alienation &c. As if an Abbot seised of certaine lands and tenements in fee, and he alieneth the same lands & tenements to an other in fee, or in taile, or for terme of life, & the Abbot dieth, his successor may not enter in the same lands and tenements, howbeit that he haue right to haue them as in the right of the house, but he is put to his action to recouer the same lands or tenements which is called a writ de ingressu sine assensu Capituli.

And if a man seised of land as in the right of his wife &c. and thereof infeoffeth an other &c. and dieth, the wife may not enter, but she is put vnto her action the which is called Cui in vita. See Stat. 32. H. 8. cap. 28. Leases.

Also, if tenant in the taile of certaine land thereof infeoffe an other &c. and hath issue and dieth &c. his issue may not enter in the land, howbeit that he hath right and title to that, but that he is put to his action, that is called a Formedone in the discender.

Also, if there be tenant in taile, and the reuersion is to the donour and to his heires, if the tenant make a feffemēt &c. and dieth without issue, he in the reuersion may not enter, but is put to his action of Formedon in the reuerter. And in the same maner it is where the tenant in the taile of certaine land where the remainder is to an other in the taile, or to an other in fee, if the tenant in the taile alieneth in fee, or in fee taile &c. and after dieth without issue, they in the remainder may not enter, but be put to their writ of Formedon in the remainder &c. and for this that by force of such feoffement and such alienations in the cases aforesaid. And in like cases those which haue title and right after the death of such a feoffor or alienor may not enter, but be put to their actions vt supra. Therefore such feoffements and alienations be called discontinuances.

Also, if a tenant in the taile be disseised, & he releaseth by his deed to the disseisour, & to his heires

heires all the right ỹ he hath in the same land, this is no discõtinuance, for this that nothing of right passeth to the disseisor but for terme of life of the tenant in the taile that made the release &c. But by the feoffement of tenant in the taile a fee simple passeth by the same feoffemẽt by force of iuery of seisin &c. but by force of a releas, nothing passeth but the right ỹ hee may lawfully & rightfully releas without hurt or damage to other persons which thereto haue right after his decease &c. & so it is a great diuersitie betweene feffement of the tenant in the taile, & a releas of the tenant in the taile. But it is said, that if tenant in the taile in this case release to the disseisor, and bindeth him & his heires to warrantize &c. and dieth, & this warranty discendeth to his issue, then that is a discontinuance because of warrantize &c. But if a man haue issue a sonne by one wife which dieth, & after he taketh another wife, & the tenements be giuen to him & his second wife, and to the heires of their two bodies engeudred, & they haue issue an other sonne, then the second wife dieth, and after the tenant in the taile is disseised, and he releaseth to his disseisor all his right &c. and bindeth him and his heires vnto warrantize, and dyeth, this is no discontinuance to the issue in the taile by the second wife, but hee may well enter &c. for this that the warrantize discended to his elder brother that his father had by his first wife.

In the same maner where the tenements be-

descendable to the yonger son after the custome of borough English, be in taile &c. & the tenant in the taile hath issue 2. sons & is disseised, & his releseth to his disseisor all his right with warranty and dyeth, the yonger son may enter upō the disseisor notwithstanding the warrantize, for this that the warrantize discendeth to the elder son, for alway the warrantize discendeth &c. to him that is heire by the common law.

Also, if an Abbot be disseised, & hee releaseth to the disseisor with warrantize, this is no discontinuance to his successour, for this that nothing passeth by this release but the right that hee hath during the time that he is Abbot and this warrantize is expired by his priuation or by his death.

Also, if tenant in the taile be seised of certain land, and hee letteth the same land for terme of yeeres, by force of which lease the lessee is in possession, to which possession the tenant in the taile by his deed releaseth all his right that hee hath in the same land to the lessee and to his heires for euer, this is no discontinuance, but after the decease of the tenant in the taile, his issue may well enter, for this that by such release nothing passeth but for terme of life of the tenant in the taile. In the same manner if the tenant in the tayle confirme the estate of the lessee for terme of certaine yeres to haue and to hold to him and to his heires, that is no discontinuance, for this that nothing passeth by such confirmation, but the estate that the tenant

nant in the tayle had for terme of his life.

Also, if a tenãt in the taile by his deed grant to another all his estate that he hath in the tenements entailed to hym, to haue & to hold all his estate to the other & to his heirs for euer, & deliuereth seisin accordingly. In this case the tenant to whõ the alienation was made, hath none other estate but for terme of life of the tenant in taile, & so it may well be proued ỹ the tenant in the taile may not graunt ne alien ne make any rightful estate of the franktenement to an other person but for term of his own life &c. For if I giue certaine land in the taile to a man, sauing a reuersion to mée, & after the tenant in the taile enfeoffeth an other in fée, the feoffée hath no right estate in the tenemẽts, for two causes. One is for that that by such feffement my reuersion is discontinued, which is a wrong act & not a rightfull act. Another cause is, if the tenant die, and his issue sueth a writ of Formedon against the feoffée, the writ shall say & also the declaration, that the feoffée wrongfully him defoyced, therefore if wrongfully hée him defoyced, he had no right estate.

Also, if land be let to a man for terme of his life, the remainder to another in the taile if hée in the remainder will graunt his remainder to another in fée by his deed, and the tenaunt for terme of life attorneth, this is no discontinuance of the remainder.

Also, if a man be tenãt in the taile of auowson in grosse or of cõmon in grosse, if hée by his deed

deed will grant the aduowson or the common to an other in fee, this is no discontinuãce, for in such case the grantee hath no estate but for terme of life of the tenãt in the taile that made this grant &c. Note well that such things as passe by way of graunt made by deed, made in the countrey &c. such grant maketh no discontinuance as in the case aforesaid, & other like cases &c. And howbeit that such be granted in fee, by fine leuied in the kings court &c. yet they make no discontinuance &c.

Also, if a man be seised in the tayle of landes deuiseable by testament &c. and hee deuiseth it to an other in fee, and dieth, and the other entreth, this is no discontinuance, for this that no discontinuance was made in the life of the tenant in the taile &c.

Also, if an Abbot haue a reuersion or a rent seruice, or a rent charge, and will graunt that reuersion, rent seruice, or rent charge to another in fee, and the tenant attorneth &c. this is no discontinuance. In the same manner it is where an abbot is seised of an aduowson or of such things that passe by way of graunt without liuery of seisin &c.

Also, if there be Graundfather tenant in the tayle, father and sonne, and the graundfather is disseised by the father, and the father maketh a feffement in fee without warrantize and dyeth, and after the graundfather dyeth, the sonne may well enter vpon the feoffee, for this that this was no discontinuance, in

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so much that the father was not seised by force of the taile at the time of the feoffement &c. but was seised in fee by disseisin made to the graundfather.

Also, if a woman inheritrix haue an husband within age, which maketh a feoffement of the tenements of the wife and dieth, it hath been questioned if the wife may enter or not. And it seemeth to some men that the entrie of the wife after the death of her husband shal be lawfull in this case, for when her husbād made such a feoffement &c. he might well enter notwithstanding such feoffement during the couerture, and he might not enter in his owne right, but in the right of his wife &c. Ergo such right that he had to enter in the right of his wife &c. that right of entrie abideth to the wife &c. after his decease. And it hath been said, that if two Iointenants being within age, make a feoffement in fee, and one of the childzen dieth, and the other suruiueth, insomuch that both childzen might enter iointly in their liues, this right of entrie groweth all to him that suruiueth, and so may enter into the whole &c.

Also, the heire of the husband that made the feoffement within age may not enter, for this that no right discendeth to such an heire in the case aforesaid, for this that the husbād had neuer any thing but in the right of the wife. And also when a child maketh a feoffement being within age, this shall neuer grieue nor hurt him, but that he may well enter &c. this should be

be against reason, that such a feoffement made by him that was not able to make such a feoffement shall grieue or hurt other, to tolle other of their entries &c. And for these causes it seemeth to some, that after the death of such an husband so being within age at the time of the feoffement &c. that his wife may wel enter &c.

Also, if a woman inheritrix taketh an husband and hath issue a sonne, and the husband dieth, and she taketh an other husband, and the second husbād letteth the land that he hath in the right of his wife to another for terme of his life, and after the wife dieth, and after the tenant for terme of life surrendreth his estate of the second husband &c. Inquire if the sonne of the wife may enter or not, in this case vpon the second husband during the life of the tenāt for terme of life. But it is clere law in this case, that after the death of the tenant for term of life, the sonne of the wife may well enter, for this that the discontinuance that was made all onely for terme of life is determined by the death of the same tenant for terme of life &c.

Also, if the Parson or vicar of a church alien certain lands or tenements parcel of his glebe &c. to an other in fee and dieth, or resigneth &c. his successor may well enter, notwithstanding such alienation, as it is said in a Note Anno 2. H. 4. Termino Mich. quæ sic incipit. Nota quod dictum fuit pro lege, In a writ of Accompt brought by the Master of a College, that if a parson or a vicar grant certaine land

that

that is of the right of his church to an other, & dieth or chāgeth, that his successor may enter: And I trow the cause is for this, that the parson or vicar that is seised &c. in right of the Church hath no right of the fee simple in the tenements, but the right of the fee simple abideth in an other person: And for this cause his successor may wel enter, notwithstanding such alienation &c. for a Bishop may haue a writ of right of tenements of right of his bishoprycke, for this that the right of fee simple abideth in him & in his Chapter. And a Dean may haue a writ of right &c. for this that the right abideth in him & in his Chapter. And an Abbot may haue a writ of right, for this that the right abideth in him & in his Couēt, & sic de alijs calib' consimilib' &c. but a parson or a vicar may not haue a writ of right &c. but ꝯ highest writ that they may haue is a writ de Iuris vtrū, ꝯ which is a great proofe that the right of fee simple is in abeiāce, that is to say, all only in the remembrance, intendemēt, & consideration of the law, for me seemeth that such a thing in such a right that is said in diuers bookes to be in abeiāce, is as much to say in latin, s. talis res vel tale rectū que vel qd' non est in homiñ adtunc superstite, sed tantummodo est & consistet in consideratione & intelligētia legis &c. & quidē alij dixerūt talem rem aut tale rectum fore in nubibus &c. But I suppose that they vnderstand these words in nubibus &c. as I haue said before.

Also, if a Parson of a church die, now the

franktenement of the glebe of the parsonage is in no man, during the time that the parsonage is void, but is in abeiance, that is to say, in cõsideration and intelligence of the Law till an other be made parson of the same Church, and immediatly when an other is parson, the frãktenement in deed is to him as successor.

Also, some men peraduẽture will argue and say, that inasmuch that the parson with thassent of the patron and ordinary, may graunt a rent charge out of the glebe of his parsonage in fee, & so charge the glebe of his parsonage perpetually, Ergo they haue fee simple, or ij. or one of them hath fee simple at the least &c. to this it may be answered, that it is a principle in law, that of euery land there is a fee simple in some man, or else the fee simple is in abeiãce &c. And an other principle is, that euery land of fee simple may be charged with a rent charge in fee, by one way or by an other &c. & when such rent is granted by the deed of the parson, the patron & the ordinary in fee, none shall haue no preiudice nor losse by force of such graunt, but the grauntors in their liues, & the heire of the patron, & successor of the ordinary after their deceases, & after such charge if the parson die, his successor may not come to the same church to be parson of the same church by the law, but by presentment of the patron, and admission & institution of the ordinary &c. And for this cause it behoueth that the successor hold him content and agreed with that which his patron and ordi-

ordinary lawfully haue done before. But the cause that such rēt charge is gone, is for this, that they which haue entries in ꝯ said church, that is to say, the patron after the law temporall, and the ordinarie after the law spirituall, were assented as parties vnto such a charge &c. and this seemeth the very cause that such glebe may be charged in perpetuitie &c. Sée stat. 13. Eliz. cap. 20.

Also, if a Bishop alien lands which bin parcel of his Bishoprieke, and dieth, this is a discontinuance to his successor, for this, that hée may not enter, but is to put his writ De ingressu sine assensu capituli &c. Sée stat. 1. Eliz.

Also if a Deane alien land parcell of his Deanrie, and dieth, his successor may not enter, but he may haue a writ De ingressu sine assensu capituli &c. Sée stat. 13. Eliz. cap. 10.

But if the Deane & the Chapter haue land to thē & to their successors in cōmon &c. Howbeit that the Deane alien such lands, his successors may well enter, for this that the franktenement at the time of the alienation, was aswell in the Chapter as in the Deane. But where ꝯ Deane is sole seised as in right of his Deanry, then such alienatiō is discontinuance to his successor, as it is aforesaid. Also some men will argue and say, that if an Abbot and his couent be seised in their demeane as of fée, of certaine land to them and to their successors &c. and the Abbot without assent of his Couent alieneth the same land vnto an other,

and

and dieth, this is a discontinuãce to his succes-sors &c. & by the same they will say, that where a Deane & a Chapter is seised of certaine land to them & to their successors, if the Dean alien the same lands &c. this shalbe a discontinuance to his successors, so that his successor may not enter &c. To this may be answered, that there is a great diuersity betweene ỹ said 2. cases for whẽ an Abbot & the Couent be seised &c. yet if they be disseised, the Abbot shall haue assise in his own name without the naming of his co-uent &c. And if a mã may or will sue a Prẽcipe qd' reddat of the same lands whẽ they be in the hands of the Abbot & his couent, it behoueth that such an action bee sued against the Abbot only without naming of the couẽt &c. for this, that all they be dead persons in the law, same only the Abbot that is soueraigne &c. and this is because of the soueraignity &c. for else hé should be as the other Monkes of the Co-uent &c. But the Deane & the Chapiter be no dead persons in the law &c. For each of them may haue an action by himselfe in diuers cases and of such landes or tenements which the Deane and Chapiter haue in commen &c. if they be disseised, that the Deane & the Chap-ter shall haue assise, & not the Deane alone, and if another wil haue an actiõ real of such lands or tenements against the Dean &c. it behoueth him to sue against the Deane and Chapiter, & not against the Deane alone &c. & so appe-reth great diuersity betweene these two cases.

Also

Also if the Master of an Hospitall discontinue certaine land of his hospitall, his successor may not enter, but he is put vnto his writ De ingressu sine assensu confratrum & sororum suarum. And all such writs doe plainely appeare in the Register &c.

Remitter.

REmitter is an auncient terme in the Law, and it is where a man hath two titles to lands or tenements, that is to say, if one of an elder title, and an other of a latter title, and he commeth to the land by the latter title, yet the law adiudgeth him to be in by force of ỹ elder title, for this, that the elder title is the more sure title, and the more worthy title, and then when a man is iudged in by force of the more elder title, this is vnto him said a Remitter, for this, that the Law shall admit him to be in the land by the elder title: as if the tenaunt in the taile discontinue the taile, & after he disseiseth his discontinuee, & so dieth seised, whereby the tenements discend to his issue, as to his cosin inheritable by force of the tayle: in this case this is to him to whom the teneměts discend which had right by force of the tail, a Remitter in the taile taken, for that, that the law shall put & adiudge him to be in by force of the taile, which is his elder title: for if he shalbe in by force of discent, then the discontinuee may haue a writ of Entry vpon the disseisin in the Per against him, & recouer the tenements, and

his dammages, but insomuch that hée is in by force of the taile, the title and the interest of the discontinuée is all vtterly annulled and defeated &c.

Also, if tenant in the taile infeoffe in fée his sonne or his cosin inheritable by force of the tayle, the which sonne or cosin at the time of the feoffement is within age, and after the tenant in the taile dieth, and hee to whom the feoffement was made is his heire by force of the title in the taile, this is a Remitter to the heire in the taile, to whom the feoffement is made: For howbeit that during the life of the tenant in the taile that made the feoffemẽt, such heire shalbe adiudged in by force of the feffemẽt, yet after the death of the tenant in the taile, ỹ heire shalbe adiudged in by force of the taile &c. and not by force of the feoffement, and though that such an heire was of full age at the time of the death of the tenaunt in the taile that made the feoffement, this maketh no matter if the heire were within age at the time of the feoffement made to him. And if such an heire being within age at the time of the feoffement commeth to ful age, liuing the tenant that made the feoffement, & so being of full age, hée chargeth by his deed the same land with a common of pasture, or with a rent charge, and after the tenant in the taile dieth. Now it seemeth that the land is discharged of the common, and of the rent, because the heire is in by an other estate in the land, then hee was at the time of the charge made.

made, inſomuch that he is in his remitter by force of the taile, & ſo the eſtate that he had at the time of the charge is vtterly defeated &c.

Alſo a principall cauſe why ſuch an heire in the caſes aforeſaid, and other caſes ſemblable ſhall be ſaid in his Remitter, is for this, that there is no perſon againſt whom that he may ſue his writ of Formedon, for againſt himſelfe he may not ſue, & he may nht ſue againſt none other, for none other is tenant in the franktenement, and for that cauſe the law adiudgeth him in his Remitter, that is to ſay, in ſuch plight, as he had lawfully recouered the ſame land againſt an other.

Alſo, if land be tailed to a man and his wife, and to the heires of their two bodies ingendred, the which haue iſſue a daughter, and the wife dieth, and the huſband taketh an other, and hath iſſue an other daughter, and diſcontinueth the taile, and after he diſſeiſeth the diſcontinuee, and ſo dieth ſeiſed, now the land diſcendeth to the two daughters: In this caſe as to the elder daughter that is inheritable, this is a remitter but of the halfe, & as to the other halfe, ſhee is put to her action of Formedon againſt her ſiſter, for in this caſe two ſiſters be not tenants in parcenary, but be tenants in common, for this that they be in by diuers titles, for the one ſiſter is in her Remitter by force of the taile, as to that that vnto her belongeth: And the other ſiſter is in as to that that belongeth to her in fee ſimple by the

diſcent of her father. In the ſame maner it is if the tenant in the taile infeoffe his heire apparant in the taile, the heir being within age, and an other iointenant in fee, & the tenant in the taile dieth, now the heire in the taile is in the Remitter, as to the halfe, and as to the other halfe he is put to his writ of Formedon &c.

Alſo, if a tenant in the taile infeoffe his heire apparant, the heire being at full age at the time of the feoffement, & after the tenant in the taile dieth, this is no Remitter to the heire, for this that it was his owne folly, that he being of full age would take ſuch feoffement &c. But ſuch folly may not be adiudged in the heire being within age at the time of the feoffement &c.

Alſo, if a tenant in the taile infeoffe a woman in fee, and dieth, & his iſſue within age taketh the woman to wife, this is a Remitter to the child, and the wife then hath nothing, for this that the husband & the wife be but one perſon in the law: And in that caſe the husband may not ſue a writ of Formedon, vnleſſe he will ſue againſt himſelfe, the which ſhall be inconuenient, and for that the Law iudgeth the heire in his Remitter, for this, that no folly may be aretted to him being within age at the time of the ſpouſals &c. And if the heire be in his Remitter by force of the taile, it followeth by reaſon that the wife hath nothing &c. for inſomuch that the husband & the wife be but one perſon, the land may not be ſeuered by halfes, and for ſuch cauſe the husband is in his Remitter of

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the whole. But otherwise it is, if such an heire be of full age at the time of the spousals, then the heire hath nothing but in the right of his wife.

Also, if a woman seised of certaine land in fee taketh an husband, the which alieneth the same land to an other in fee, and the alienee letteth the same land to the husband and the wife for terme of their two liues, sauing the reuersion to the lessor, and to the heire, in this case the wife is in her remitter, and shee is seised in deed in her demesne as in fee, as shee was before, for this, that the taking of estate shal be adiudged in the law the deed of the husband, and not the deed of the wife, so that no folly may be iudged in the wife that is couert in such case: And in this case the lessour hath nothing in the reuersion, for this that the wife is seised in fee. But in this case if the lessour will sue an action of waste against the husband and his wife, for this that the husband hath made waste, the husband may not barre the lessour for to shew this, that the taking of estate made vnto him and to his wife, made a Remitter to his wife, for this that the husband is stopped to say this against his feoffement and owne reprisell of estate for terme of life to him and his wife, and yet the lessour hath no reuersion, for this that the fee simple is in the wife. So a man may see a matter in this case, that a man shall be estopped by a matter in deede, though no writing by deede indented

ted, or otherwise be thereof made. But if in an action of waſt the husband make default at the graund diſtreſſe, and the wife prayeth to be receiued, and is receiued, she shall well shew all the matter, and how shee is in her Remitter, and shal barre the leſſor of his action: For in euery case that the wife is receiued for default of her husband, she shall plead and haue the same aduantage in pleading, as she were a woman sole. And howbeit that the aliener made no leaſe to the husband and his wife by deede indented, yet this is a Remitter to the wife, and though the alienee yelded the same lande to the husband and his wife by fine for terme of their liues, yet this is a Remitter to the wife, for this that the wife couert that taketh eſtate by fine shall not be examined by the Juſtices. And here note well, that when any thing shall paſſe from the wife that is couert of husband by force of a fine, as the husband & wife make conuſance of right to an other &c. or make a grant to yeld to an other, or releaſe by a fine to an other, et ſic de ſimilibus, where the right of the wife paſſeth from the wife by force of the same, the wife in all ſuch caſes shall be examined before that the fine be accepted. And ſuch fines conclude ſuch wiues couert for euer. But where nothing is moued in the fine, but all onely that the husband & the wife take eſtate by force of the same fine, this shall not conclude the wife, for this that in ſuch caſe she shall be neuer examined.

Alſo

Also if tenant in the tayle discontinue in the tayle, & hath a daughter & dyeth, & the daughter being of full age taketh an husband, & the discontinuee maketh a lease of this to the husband & his wife for terme of their lines, this is a Remitter in deed to the wife, and the wife is in by force by the taile, Causa qua supra.

Also if land be giuen to the husband and his wife, to haue and to hold to them and to the heires of their two bodies begotten, and after the husband alieneth the land in fee, and taketh againe an estate to him & to his wife for terme of their two lines. In this case this is a Remitter in deed to the husband & the wife manager the husband, for it may not be a Remitter to the wife, except it be a Remitter to the husband, for this that the husband and his wife be but one person in the law, though that the husband is stopped to claime this to be a Remitter in him against his alienation, and his own repriſell, as is afore ſaid.

Also if land be giuen to a woma in the taile, the remainder to an other in the taile, the remainder to the third in the taile, the remainder to the fourth in fee, & the wife taketh one husband, & the husband discontinueth the land of his wife, by this discontinuance al the remainders be discontinued, for if the wife die without issue, they in ye remainder shal haue no remedy, but to sue their writs of Formedon in the remainder whē they come to their time &c. But if after such discontinuance, estate be made to the

the husband and his wife for terme of their two liues, or for terme of an other life, or an other estate &c. for this, that this is a Remitter to the wife, this is a Remitter to all those in the remainder &c. For after this that the wife, that is in her Remitter, dieth without issue, they in the remainder may enter &c. without any action or suite &c. In the same maner it is of them which haue the reuersion after such tayle &c.

Also, if a man let a house to a woman for terme of her life, sauing the reuersion to the lessor, and after one sueth a faint and false action against the woman, and recouereth the house against her by default, so that the woman may haue against him a Writ of Quod ei deforceat, after the Statute of Westminster the second chapter 4. now is the reuersion of the lessour discontinued, so that hee may not haue an action of waste. But in this case if the woman take an husband, and hee that recouereth letteth the house to the husband and his wife for terme of their two liues, the wife is in her Remitter by force of the first lease. And if the husband and the wife make waste, the first lessor shall haue against him a Writ of waste for this, that in so much that the wife is in her Remitter, hee is remitted to his reuersion. But it seemeth in this case, if he that here commeth by the false action, will bring an other Writ of waste against the husband and his wife, the husband hath no remedie against him,

him, but to make default at the great distresse &c. And to cause the wife to be received and to plead the matter against the second iessour, and to shew that the action by which her recouered was faise and fayned in the law, and so the wife may barre &c.

Also, if the husband discontinue the land of his wife, and after taketh estate to him and to his wife, and the third man for terme of their liues, or in fee, this is a Remitter to the woman but as to the moitie. And as for the other moitie it behoueth her after the death of her husband to sue a Cui in vita.

Also if the husband discontinue the land of his wife, and goe ouer the sea, and the discontinuee let the same land to the woman for terme of life, and deliuer to her seisin, and after the husband commeth and agreeth to that liuerie of seysin, this is a remitter to the woman, and yet if the woman had beene sole at that time of her Lease made to her, this should be to her a Remitter, but insomuch as shee was couert baron, at the time of the lease, and the liuerie of seisin made to her, though that she only take the liuery of seisin, this was a Remitter to her, because a woman couert shall be adiudged as an Infant within age in such case &c. Enquire in this case if the husband when he commeth againe will disagree to the lease and liuery of seisin made to his wife in his absence, if this shall put the woman from her Remitter.

Also, if the husband discontinue the tene-

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ments of his wife, and the discontinuée is disseised, and after the disseisor letteth the sayd tenements to the husband & his wife for terme of life, this is a Remitter to the wife, but if the husband and the wife were of couin or consent that the disseisin should be made, then it is no Remitter to the wife, because shee is a disseiouresse. But if the husband were of couin & consent to the disseisin and not the wife, then such lease made to the wife is a Remitter, because that no default was in the wife.

Also, if such a discontinuée had made estate of freeholde to the husband and the wife, by Indenture vpon condition .s. reseruing to the discontinuée a certaine rent, and for default of payment a reentry, and because that the rent is behind the discontinuée entreth, of this rent the womã shall haue assise of nouel disseisin, after the death of her husband against the discontinuée, because that the condition was wholy annulled, insomuch as the woman was in her remitter, yet the husband with his wife could not haue assise because the husband is stopped.

Also, if the husband discontinue the tenements of his wife, and taketh estate againe for terme of his life, the remainder after his decease to his wife for terme of her life, in this case this is no Remitter to the wife during the life of her husband, because that during the life of the husband, the wife hath nothing in the freehold, but if in this case the wife ouerliue the husband, this is a Remitter

to

to the wife, because that a freehold in law is fallen vpon her mauger her will, & insomuch that she can haue no action against none other person, and against her seife shee can haue no action, therefore she is in her Remitter, for in this case though that the woman enter not the tenements, yet a stranger that hath cause to haue action may sue his action against the woman of the same tenements, because she is tenant in law, though shee be not tenant in deede, for tenant of franktenement in deede is he, that if he be disseised of franktenement may haue Assise, but the tenant in the law before his entrie shall haue no assise, & if a man seised in fee of certaine land hath issue a sonne which taketh a wife, and the father dieth seised, and after the sonne dieth before any entrie made by him into the land, the wife of the sonne shall be endowed in the land, & yet he had no franktenement in deed, but he had a fee & a franktenement in law. And note well, that a Præcipe quod reddat may be aswel maintained against him that hath the franktenement in law, as against him that hath franktenement in deed.

Also, if a tenant in the taile haue issue two sonnes of full age, and he letteth the tayled land to the elder sonne for terme of his life, the remainder to the yonger sonne for terme of his life, and after the tenant in the taile dieth: In this case the elder son is not in his remitter, because he tooke estate of his father, but if the elder sonne die without issue of his body, then

then this is a remitter of the yonger brother, because he is heire in the taile, and a franktenement in law is fallen vpon him by force of the remainder, & there is none against whom he may sue his action &c. In the same maner it is where a man is disseised, and the disseisour dieth thereof seised, and the tenements discend to his heire, and the heire of the disseisor maketh a lease to a man of the land tenements for terme of life, the remainder to the disseisee for terme of life, or in taile, or in fee, and the tenant for terme of life dyeth, now this is a Remitter to the disseisee &c. Causa qua supra.

Also if a tenant in the taile infeoffe his sonne and an other of the tailed land in fee, and liuery of seisin is made to the other according to the deede, the sonne not knowing thereof, nor agreeing to the feoffement, and after he that toke the liuery of seisin dieth, and the sonne occupieth not the land, nor taketh any profite of the land during the life of his father, and after the father dieth, now this is a Remitter to the sonne, because the freehold is fallen vpon him by the survivor, and no default was in him, because he neuer agreed &c. in the life of his father, and there is none against whō he may pursue his writ of Formedone &c. For if a man be disseised of certaine land, and the disseisor maketh a deed of feoffement, whereof he infeoffeth B. C. and D. and the liuery of seisin is made to B. and C. but D. was not at the liuery of seisin, nor neuer

agreed

agreed to the feoffement, nor neuer would take the profits &c. And after B. & C. die, and D. ouerlaieth them, and the disseisee bringeth his writ sur disseisin in the Per, against the same D. he shall shew all the matter, & how that he neuer agreed to the feoffement, and so he shall discharge himselfe of damages, so that the demandant shal recouer no damage against him, though that he be tenant of ꝑ franktenemēt of the land. And yet the statute of Glocester will, that the disseisee shal recouer damage in a writ of Entre, grounded vpon the Nouel disseisin against him that is found tenant. And this is a proofe in the other case, that in somuch as the issue in the taile commeth to the franktenemēt not by his deed, nor by his agreement, but after the death of his father, this is a Remitter to him, insomuch that he can sue an action of Formedon against none other person.

Also, if an Abbot alien the land of his house to an other in fee, and the alienee by his deed chargeth the land with a rent charge in fee, & after the alienee infeoffeth the Abbot with licence, to haue and to holde to the Abbot and his successours for euer, and after the Abbot dieth, and an other is chosen and made Abbot: In this case the Abbot that is successor & his Couent be in their Remitter, and shal hold the land discharged, because that the same Abbot cannot haue an action by his writ of Entre sine assensu Capituli of the same lands against none other person. In the same maner it is

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where a Bishop, or Dean, or other such person alien &c. without assent &c. And after the Bishop taketh estate againe of the same land by licence to him, and to his successors, and after the Bishop dieth, his successor is in his Remitter as in the right of his Church, and shall defeat the charge &c. Causa qua supra.

Also, if a man sue a false action against tenant in the taile, as if a man will sue against him a writ of Entre in the post, supposing by his writ that the tenant in the taile had not his entrie but by A. of B. that disseised the graund father of the demaundant, and that is false, and he recouereth against the tenant in the taile by default, and sueth execution, and after the tenant in the taile dieth, his issue may haue a writ of Formedon against him that recouered, and if hée will pleade the recoueris against the tenant in the taile, the issue may say, that the said A. of B. disseised not the graund father of him that recouered in such maner as his writ supposeth, and so he shall satisfie his recouery. Also, suppose that that was true, that the said A. of B. disseised the graund father of the demandant that recouered, and that after the disseisin the demandant or his father, or his graund father by a déde had released to the tenant in the taile, all the right that he had in the land &c. And this notwithstanding he sueth his writ of Entre in the Post against the tenant in the tayle, in the maner as is aforesaid, and the tenant in the

taile

tayle pleadeth to him, that the said A. of B. disseiseth not his graundfather, as his writ suppoleth: and vpon this they be at issue, and the issue is found for the demandant, whereby hee hath iudgement to recouer and sueth execution, and after the Tenant in the taile died, his issue may haue a writ of Formedon against him that recouered. And if hee will plead the recouery by action tryed against his Father tenant in the tayle, then hee may shew and plead the release made to his Father, and so the action that was sued was faint in the Law &c.

And it seemeth that faint action is as much to say in English, as fained action that is to say, such action, that though the wordes of his writ be true, yet for certaine causes hee hath no cause nor title by the law to recouer by the same action. And faise action is, where the wordes of the writ be faise: And in the two cases before said, if the cale were such that after such a recouery and execution thereof made, the tenant in the tayle had disseised him that recouered, and thereof died seised, whereby the land also discended vnto his issue, this is a Remitter to the issue, and the issue is in by force of the tayle: And for that cause I haue put these two cases aforesaid, to informe thee (my Sonne,) that the issue in the tayle by force of a discent made to him after a recouerie and execution thereof made against his auncestor, may be aswell in his Remitter, as

as he should by discent made to him after a discontinuance made by the auncester of the tayled land by feoffement in the country, or otherwise.

Also, in the same case aforesaid, if the case were such, that after the demandant had iudgment to recouer against the tenāt in taile, and the same tenant in the taile died before any execution had against him, whereby the tenements discend to his issue, and he that recouered sued a Scire facias to haue execution of the iudgement against the issue in the taile, the issue shall plead the matter, as before is said, and so shall proue that the recouery was false or faint in the law, and so shall barre him to haue execution of the iudgement &c.

Also, if the tenāt in the taile discontinue the taile and die, and his issue bringeth a writ of Formedon against the discontinuee being tenant of the freehold of the land, & the discontinuee pleadeth that he is not tenant, but otherwise disclaimeth from the tenancy in the land: in this case the iudgement shall be, that the tenant goe without day, & after such iudgement the issue in ỹ taile that is demandant may well enter in the land, notwithstanding the discontinuance. And by such entry he shalbe adiudged in his Remitter, & the cause is, because that if any man sue a Pręcipe qd' reddat against anie tenant of freehold, in which action the demandant shall not recouer damages, & the tenaunt pleaded not Nontenure, but otherwise disclaymeth

neth in the tenancy, the demaundant may not auerre in the writ, that he is tenãt as the writ suppoſeth. And for that cauſe the demandant after that the iudgement is giuen, that the tenaunt ſhall goe without day, may enter into the tenements demaunded, the which ſhall be as great aduantage to him in the law, as if hee had iudgement to recouer againſt the tenant. And by ſuch entry hee is in the Remitter by force of the taile: but where the demandant recouereth damnages againſt the tenant, there the demaundant may auerre that hee is tenant as the writ ſuppoſeth, and that for the aduantage of the demandant for to recouer his damnages, or els hee ſhall not receiue his damnages, the which damnages be or were giuen him by the law.

Alſo, if a man be diſſeiſed, and the diſſeiſor dye his heire being in by diſcent, now the entry of the diſſeiſee is taken away. And if the diſſeiſee bring his writ of entry vpon the diſſeiſin in the Per againſt the heire, and the heire diſclaimeth in the tenancy &c. the demandant may auerre his writ that hee is tenant as the writ ſuppoſeth if hee will, for to recouer his damnages. But yet if he will leaue the auerment &c. he may lawfully enter into the land, becauſe of the diſclaimer, notwithſtanding that his entry before was taken away. And that was adiudged before my Maſter Sir Robert Danby late chiefe Iuſtice of the Common place, and his Companions. 5. E. 4. fol. 1. E 45.

Also, where the entry of a man is lawfull, though that hée take estate to him when hé is of full age for terme of life, or in tayle, or in fée, this is a Remitter to him, if such taking of estate be not by deed indented, or by matter of record that shall conclude or stop him. For if a man be disseised, and thereof taketh estate of the disseisor without deed, or by deed Poll, that is a good Remitter of the disseisée.

Also, if a man let land for terme of life to an other which alieneth to an other in fée, & the alienor maketh estate to ỹ lessor, this is a remitter to the lessor, because his entry was lawfull.

Also, if a man be disseised, and the disseisor letteth the land to the disseisée by deed Poll, or without deed for terme of yeeres, whereby the disseisée entreth, this entry is a Remitter to the disseisée: for in such case where the entry of a man is lawfull, & a lease is made to him, though that hee claime by words in the countrey, that hee hath estate by force of such lease, or sayeth openly that hée claimeth nothing in the land, but by force of such lease, yet this is a Remitter to him, for such claime in the countrey is nothing to purpose: but if he claime in a court of Record that hée hath estate but by force of such leas and not otherwise, then he is concluded &c.

Also, if two Jointenats seyled of certaine land in fée, the one being of full age, the other within age be disseised, and the disseisor dyeth seised, and his issue entreth, the one of the

iointenants being then within age, and after that he commeth to full age, the heire of the disseisor letteth the land to the same iointenants for terme of their liues, this is a Remitter as to the halfe to him that was within age, because that he is seised of the moitie that belongeth to him in fée, because his entrie was lawfull. But the other iointenant hath in the other halfe but estate for terme of life by force of the lease, because his entrie was taken away &c.

Warrantie.

IT is commonly said, that there be three maner of warranties, that is to say: warranty lineall, warranty collaterall, and warranty that beginneth by disseisin. And it is to wit, that before the statute of Gloucester, all warranties which discended to them which were heires to them that made the warranty, were barres to the same heires to demaund any lands or tenements against those warranties, except the warranties that began by disseisin, for such warranty was neuer barre to the heire, because the warranty began by wrong, that is to say, by disseisin.

Warranty that beginneth by disseisin is in such forme: As where there is father & sonne, & the sonne doth purchase land &c. and letteth the same land to his father for terme of yeres, and the father by his deed thereof infeoffeth an other in fée, and bindeth him and his heires to war-

warranty, & if the father die whereby the warranty discendeth to his sonne, this warranty shall not barre the sonne, for notwithstanding this warranty, the sonne may well enter into the land, or haue an Assise against the alienee if he will, because the warranty began by disseisin: For when the father that had no estate but for terme of yeres made a feoffement in fee, this was a disseisin to the son of the franktenemēt that thē was in the sonne. In the same maner it is if the sonne let vnto the father the land to hold at will, & after ȳ father maketh a feoffemēt with warrāty &c. And as it is said of ȳ father, so it may be said of euery other auncestor &c.

In the same maner it is if tenant by Elegit, tenant by statute marchant, or tenant by statute staple, maketh a feoffement in fee with warranty &c. this shal not barre the heire that ought to haue the land, because that such warranties begin by disseisin.

Also if a warden in chiualry, or warden in socage make a feoffemēt in fee, in fee taile, or for term of life with warrāty &c. Such warrāties be no bars to the heires to whom the land shal discend, because that they begin by disseisin.

Also, if the father & the sonne purchase certaine lands or tenements, to haue & to hold to them iointly &c. and after the father alieneth the whole to an other, and bindeth him and his heires to warranty &c. and after the father dieth, this warranty shall not barre the sonne of the moitie that belongeth vnto him of the same

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tenemẽt, because that as to ỹ moity that belonged to the son, the warrãty began by disseisin.

Also, if A. of B. be seised of a mease, and F. of G. that hath no right to enter in the same mease, claiming to hold the same mease to him & to his heires, enter into the same mease, but A. of B. then is continually dwelling in the same mease, in this case the possession of the franktenement shalbe alway adiudged in A. of B. & not in F. of G. because that in such case where two be in one mease, or in other tenements, & the one claimeth by one title, and the other by an other title, ỹ law shall adiudge him in possession that hath right to haue the possession of the same tenement. But in the case aforesaid, if F. of G. make a feoffment to certain barretors & extortioners in the countrey for to haue maintenance of them of the same mease by a deed of feoffement with warranty, by force of which the said A. of B. dare not dwell in the same mease, but goeth out of the same mese, this warrãty beginneth by disseisin, because that such a feffemẽt was cause that the said A. of B. left the possessiõ of the same mese.

Also, if a man that hath no right to enter in an others tenements, enter into the said tenements, and incontinently maketh a feoffement to other persons by his deede with warranty, and delivereth to them seisin, this warranty beginneth by disseisin, because that the disseisin and the feoffement were made as it were at one time. And that this is law, ye

may ſée it in a plée Anno 31. Ed. 3. in a writ of Formedon in the reuerſion, Garr. Fitzh. 28.

Warranty lineall is where a man ſeiſed of certaine lands in fée maketh a feoffement by his déed to an other, and bindeth him and his heires to warranty, and hath iſſue & dieth, and the warranty diſcendeth to his iſſue, this is a lineall warranty: And the cauſe why this is a lineall warranty, is not becauſe that the warranty diſcendeth from the father to his heire, but the cauſe is, becauſe that if no ſuch déede with warranty had béen made by the father, then the right of the tenements ſhould diſcend to the heire, and the heire ſhould conuey the diſcent from the father &c. For if there be father and ſonne, and the ſonne purchaſe tenements in fée, and the father diſſeiſeth the ſonne thereof, and alieneth it to an other in fée by his déed, and by the ſame déede bindeth him and his heires to warrant the ſame tenements and ſo forth, and the father dieth, now is the ſonne barred to haue the ſaid tenements, for he may by no ſuite, nor by any other meanes haue the ſaid tenements, becauſe of the ſaid warranty: And that is a collaterall warranty, and yet the warranty diſcendeth lineally from the father to the ſonne. But becauſe that if no ſuch déed with warranty had béen made, the ſonne in no manner might conuey the title that hée hath of the tenements from his father to him, inſomuch that his father had no eſtate nor right in the tenements, there-

fore

fore such warrantie is called collaterall warrantie: Insomuch that hee that made the warranty is collateral to the title of the tenemẽts, and that is as much to say, that hee to whom warranty discended, could not conuey the title that he had in the tenements by him that made the warrantie in this case, if no such warranty had bin made.

Also, if there be graundfather, father, and sonne, & the graundfather is disseised, in whose possession the father releaseth by his deed with warranty &c. and dieth, and after the graundfather dieth, now is the sonne barred of the tenements by the warrantie of his father, & this is called lineall warranty, because that if no such warrantie had bin made, the sonne might not haue conueyed the right of the tenements to him, nor shew how he is heire to the grandfather, but by meanes of the father &c.

Also, if a man haue issue three sonnes and is disseised, and the elder sonne releaseth to the disseisor by his deed with warrantie &c. and dieth without issue, and after this the Father dieth, this is a lineall warrantie to the yonger sonne, because that though ỹ elder sonne dyed in the life of the father, yet by possibilitie it might be that hee might conuey to him the title of the land by his elder brother, if no such warranty had bin made: For it might be that after the death of the Father, the elder brother entred into the tenements and dyed without issue, and then the yonger sonne shall conuey

to him the title of his elder brother. But in this case, if the yonger son releas with warrãty to the disseisor, and dieth without issue, this is a collateral warranty to the eldest sonne, because that of such land as was to ꝯ other, the elder brother by no possibilitie might convey to him the title by meane of the yonger brother.

Also, if the tenant in the taile hath issue three sonnes, and discontinue the taile in fee, and the middle sonne releaseth by his deed to the discontinuee, and bind him & his heires to warrantize &c. and after the tenant in the taile die, and the middle dieth without issue, now is the elder sonne barred to haue any recouery by a writ of Formedon, because that the warrantie of the middle brother is collaterall to him, insomuch that he may by no maner convey to him by force of the tayle any discent by the middle brother, and therefore it is a collaterall warranty. But if in this case the elder brother die without issue, now the yonger brother may well haue a Formedon in the discender, & recouer the same land, because that the warrantie of the middle brother is lineall to the yonger brother, because it may be, that by possibilitie the middle brother may be seised by force of the tayle after the death of his elder brother, and then the yongest brother may convey his title of discent by the middle brother &c.

Also, if the tenant in the taile discontinue the taile, & hath issue and die, and the uncle of the issue releas to the discontinuee with warranty

and die without iſſue, this is a collateral warranty to the iſſue in the tayle, becauſe that the warrantie diſcendeth vpon the iſſue, which cannot conuey himſelfe to the tayle, by meane of his vncle.

Alſo, if the tenant in the taile hath iſſue two daughters and die, and the elder daughter entreth into the whole, & thereof maketh a feffement in fee with warranty, and after the elder daughter dieth without iſſue: In this caſe the yonger daughter is barred, as to the moitie, & as to the other halfe ſhee is not barred, for as to the moity ꝑ belongeth to the yonger daughter, ſhee is barred, becauſe that as to the moitie that belongeth to her, ſhee cannot conuey the diſcent by the meanes of her elder ſiſter. And therefore as to the moity, that is collaterall warranty, but as to the other moity which belongeth to her elder ſiſter, by the ſame elder ſiſter the warranty is no barre to the yonger ſiſter, becauſe that ſhe may conuey her diſcent as to that moity that belongeth to her elder, by the ſame elder ſiſter: And ſo as to that moitie that belongeth to the elder ſiſter, the warrantie as to that is lineall to the yonger ſiſter.

And note well, that as to him that demaundeth fee ſimple by any of his auncеſters, hee ſhalbe barred by lineall warranty which diſcendeth vpon him, except hee be reſtrained by ſome ſtatute, but he which demandeth fee tayle by a writ of Formedon in the diſcender, ſhall not be barred by lineall warrantie, except hee

haue

haue enough by diſcent in fée ſimple by the ſame anceſter that made the warrantie, but a collaterall warranty is a barre to him that demaundeth fée, and alſo to him that demandeth fée taile, without any other diſcent of fée ſimple, except in caſes that be reſtrained by the ſtatute, and other caſes for certaine cauſes, as ſhalbe ſaid hereafter.

Alſo, if land be giuen to a man and to his heires of his bodie begotten, the which taketh a wife, and haue iſſue a ſonne betweene them, and the huſband diſcontinueth the taile in fée, and dyeth, and after the wife releaſeth to the diſcontinuee in fée with warrantie and dyeth, and the warrantie diſcendeth to the ſonne, this is a collaterall warranty. But if tenements be giuen to the huſband and the wife, and to the heires of their two bodies begotten, which haue iſſue a ſonne, & the huſband diſcõtinueth the tayle, and dyeth, & after the wife releaſeth with warranty & dieth, this warranty is but a lineall warranty to the ſon, for the ſonne ſhal not be barred in this caſe to ſue his writ of Formedõ, except he haue enough by diſcent in fée ſimple by his mother, becauſe that their iſſue in a writ of Formedon ought to conuey to him the right as heire to his father and to his mother of their two bodies begotten, by formè of the gift. And ſo in ſuch caſe the warrantie of the father, and the warrantie of the mother, be but as lineall warranties to the heire &c. And note well, ỹ in euery caſe where a man demandeth

deth tenements in fée taile by a writ of Formedone, if any of the issues in the taile that had possession, or that hath possession, make a warranty &c. if he that sueth the writ of Formedon might by any possibilitie by matter that might be in deed conuey to him by him that made the warranty by the forme of the gift. This is a lineall warranty, and not collaterall.

Also, if a man haue issue three sonnes, and he giueth land to the eldest sonne, to haue and to hold to him and to the heires of his body begotten, and for default of such issue the remainder to the middle sonne, to him, and to the heires of his body begotten, and for default of such issue the remainder to the yongest sonne, and to his heires of his body begotten, in this case if the eldest sonne discontinue the taile in fée, and binde him, and his heires to warranty, and die without issue, this is a collaterall warranty to the middle sonne, and he shall be barred to demaund the same land by force of the remainder, because that the remainder is his title, and his eldest brother is collaterall to the title which beginneth by force of the remainder.

In the same maner it is if the middle sonne had the same land by force of the remainder, because that his eldest brother made no discontinuance, but dieth without issue of his body, and after the middle sonne maketh a discontinuãce with warranty &c. and dieth without issue, this is a collaterall warranty to the yongest

yongeſt ſonne, and alſo in this caſe if any of the ſaid ſonnes be diſſeiſed, and the father that made the gift releaſe to the diſſeiſour all his right &c. with warranty, this is a collaterall warranty to the ſonne vpon whom the warranty diſcended, Cauſa qua ſupra. And ſo note well, that where a man that is collaterall to the title &c. releaſeth with warranty, this is a collaterall warrantie.

Alſo, if the Father giue land to his elder ſonne, to haue and to holde to him and to his heires males of his body begotten, the remainder to the ſecond ſonne &c. if the eldeſt brother alien in fee with warranty &c. and hath iſſue female & dieth without iſſue male, this is not a collateral warranty to the ſecond ſonne, nor ſhall not hurt him of his action by Formedon in the remainder, becauſe that the warranty diſcendeth to the daughter of the eldeſt ſonne, and not to the ſecond ſonne. For euery warranty that diſcendeth, diſcendeth to him that is heire vnto him which made the warranty by the common Law &c.

Alſo, if land be giuen to a man and to his heires males of his body begotten, and for default of ſuch iſſue the remainder thereof to his heires females of his body begotten, and after the donee in the taile maketh a feoffement in fee with warranty according, and hath iſſue a ſonne and a daughter and dieth, this warranty is but a lineall warranty to the ſonne, to demaund by writ of Formedon in the diſcender.

cender. And it is but lineall to the daughter to demaund the same land by writ of Formedon in the remainder, if her brother die without heire male, because that shee claimeth as heire female of the body of her father begotten. But in this case if her brother in his life release to the discontinuee with warranty &c. and after die without issue, this is a collaterall warrantie to the daughter, because that shee cannot conuey to her the right that shee had by force of the remainder by any meane of discent by her brother, and therefore the brother is collateral to the title of his sister, and therefore his warranty is collaterall &c.

Also, I haue heard say, that in the time of king Richard the second, there was a Justice in the common place dwelling in Kent, called Rickhil, that had issue diuers sonnes: and his intent was, that his eldest sonne should haue certaine lands to him and to his heires of his body begotten, and for default of issue, the remainder to his second sonne, and so forth, and so the third sonne &c. and because that he would that none of his sonnes should alien or make warranty for to barre or to hurt the other that should bee in the remainder &c. he causeth to be made an Indēture to such effect, that is to say, that the landes and tenements were giuen to his eldest sonne vpon this condition, that if the eldest sonne aliened in fee, or in fee taile &c. or any of his sons aliened &c. that then their estate should cease & should be void,

void, and that then the said landes or tenements immediatly should remaine to the second sonne, and to the heires of his body begotten, and that vpon the same condition, that is to say, if the second sonne alien &c. that then his estate should cease, and that then the same landes & tenements should remaine to the third sonne, and to the heires of his body begotten &c. the remainder to other of his sonnes, and liuery of seisin was made according. But it seemeth by reason that all such remainders in the forme beforesaid be void, and of no value, and that for three causes. One cause is, because euery remainder that beginneth by a deed, it behoueth that the remainder be in him to whom the remainder is tailed by force of the same deede when the liuery of seisin is made to him that hath the franktenement. And such remainder was not to the second sonne at the time of liuery of seisin in the case before said &c.

The second cause is, if the first sonne alien the tenements in fee, then is the franktenement and the fee simple in the alienee and in none other, and if the donour had any reuersion by such alienation, the reuersion is discontinued, then though that by some reason it may be that such remainder shall begin his being and his growing immediatly after such alienation made to a straunger, that hath by the same alienation franktenement and fee simple, and also if such remainder should

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be good, then might he enter vpon the alienée where he had no maner of right before the alienatiõ, which should be incõuenient. The third cause is, when the condition is such that if the eldest son alien &c, that his estate shall cease, or shall be void &c. then after such alienation &c. may the donor enter by force of such condition &c as it séemeth, and so the donor or his heires in such case ought more soner to haue the lãd, then the second sonne that hath no right before such alienation &c. and so it séemeth that such remainders in the case aforesaid be void.

Also, at the common law before the statute of Glouceſter, if the tenaunt by curteſie had aliened in fée with warrantie according, after his deceaſe this was a barre to the heire &c as it appeareth by the wordes of the same statute: But it is remedied by the same statute that the warranty of the tenant by the curteſie shall be no barre to the heire, except hée haue enough by diſcent by the tenant by the curteſie, for before the said estatue that was a collaterall warrantie to the heire, becauſe hée could not conuey any title of diſcent to the tenements by the Tenant by the curteſie, but only by his mother or other of his anceſtors &c, and that is the cauſe why it was collaterall warrantie. But if a man enheriter, take a wife, which haue iſſue a sonne betweene them and the father dieth, & the sonne entreth into the land, and endoweth his mother, and after his mother alieneth that that shée hath in her

power

dower to an other in fee, with warranty accoꝛding, and after dyeth, and the warrantie diſcendeth to the ſonne, noẅ the ſonne ſhall be barred to demaund the ſame land becauſe of the ſaid warrantie, becauſe that ſuch collaterall warranty of tenant in dower is not remedied by any ſtatute. The ſame Law is where tenant foꝛ terme of life maketh an alienation with warranty &c. and dyeth, and the warrantie diſcendeth to him that had the reuerſion oꝛ the remainder &c. they ſhall be barred by ſuch warrantie &c.

Alſo, in the ſaid caſe if it ſo were, that when the tenant in Dower alieneth &c. the heire was within age, and alſo at that time that the warrantie diſcendeth vpon him, he was within age, in this caſe the heire may after enter vpon the alienee notwithſtanding the warrantie diſcended &c. becauſe that no laches ſhall be adiudged in the heire within age, that he entred not vpon the alienee in the life of the tenant in Dower, but if the heire was within age at the time of the alienation, and after he came to full age in the life of the tenant in Dower, and ſo being of full age, he entred not in the life of the tenant in Dower, and after the tenant in Dower dyeth, there peraduenture the heire ſhall be barred by ſuch warranty becauſe it ſhall be accounted his folly that he being of full age, entred not in the life of the tenant in Dower &c.

Alſo, it is ſpoken in the end of the ſaid eſta-

ſtatute of Glouceſter, that ſpeaketh of the alienation with warranty made by the tenant by the curteſie in ſuch forme.

Alſo, in the ſame maner the heire of the woman after the death of his father and mother ſhall not be barred of action, if he demaund the heritage or the mariage of his mother by a writ of Entry that his father aliened in the time of his mother, wherof no fine is leuied in the kings court &c. And ſo by force of the ſame ſtatute, if the huſband of the wife alien the heritage or mariage of his wife in fee with warranty &c. by his deede in the countrey, this is cleere law, that this warranty ſhall not barre the heire, except he haue ynough by diſcent &c. But the doubt is, if that the huſband alien the heritage of his wife by fine leuied in the kings courts with warranty &c. if this ſhall barre the heire without any diſcent in value &c. And as to that I will ſay here certaine reaſons that I haue heard ſay in this matter. I heard my Maſter Sir Rich. Newton late chiefe Iuſtice of the common place ſay once in the ſame place, that ſuch warranty that the baron maketh by fine leuied in the kings Court, ſhall barre ỹ heire, though that he haue nothing by diſcent, becauſe the ſtatute ſaith, wherof no fine is leuied in the kings court &c. And ſo by his opinion, this warranty by fine &c. abideth yet a collaterall warranty, as it was at the common law not remedied by the ſaid eſtatute, becauſe that the ſaid eſtatute accepteth the

alienation by fine with warranty. And some other haue said, & yet say the contrary, & this is their proofe, that as by the same chapiter of the said estatute is ordeined, that the warranty of the Tenant by the curtesie shall not barre the heire, except he haue ynough by discent &c. though that the tenant by the curtesie leuie a fine of the same lands with warranty &c. as strongly as he can, yet this warrantie shal not barre the heir, except he haue assets or ynough by discent &c. And I beleeue that this is law, and therefore they say, that it should be inconuenient to vnderstand the statut in such forme that a man that hath not but in the right of his wife, may by fine leuied by himselfe of the tenements that he hath but in the right of his wife with warranty &c. barre the heire of the said tenements without discent of the fee simple &c. where the tenant by the curtesie cannot do it. But they haue said, that the statute shall be vnderstood after this forme, that is to say, where the statute speaketh, whereof no fine is leuied in the kings court, that is to say, whereof no lawfull fine is rightfully leuied in the same kings Court, and that is, whereof no fine of the husband and his wife is leuied in the kings court, for at the time of the making of the said statute, euery estate of landes or tenements that any man or woman had that should discend to his heire, was fee simple without condition, or vpon condition in deede or in law. And because that such fine then might

might lawfully haue beene leuyed by the husband and his wife, and that if the heires of the husband warrant &c. such warranty shall barre the heire &c.

And so they say that this is the vnderstanding of the said statute, for if the husband and the wife made a feoffement in fee by deede in the countrey, the heire after the decease of the husband & the wife shal haue a writ of Entry sur cui in vita &c. notwithstãding the warrãty of the husband: Then if no such exception was made in the statute of the fine leuyed &c. then the heire should haue the writ of Entry &c. notwithstanding the fine leuied by the husband and the wife, because that the words of the statute before the exception of the fine leuied &c. be generall &c. that is to say, that the heire of the woman after the death of her husband & the wife, shall not be barred of action, if he demaund the heritage or the mariage of his mother by a writ of Entry, that his father aliened in the time of his mother, & so it should be in that case of ỹ statute, except such words were, that is to say, whereof no fine is leuyed in the Kings Court: and so they say, that this is to be vnderstood, whereof no fine by the husband & the wife is leuied in the Kings court, the which is lawfully leuied in such case: For if the Iustices haue knowledge ỹ a man that hath nothing but in the right of his wife, will leuy a fine in his name only, they will not, nor ought not to take such fine to be leuied by the

husband only without naming the wife, therefore inquire of this matter.

Also, it is to wit, that in such words where the heire demaundeth the heritage or mariage of his mother, this word (where) is a disiunctiue, & is as much to say, if the heire demaund the heritage of his mother, that is to be vnderstood the tenements that his mother had in fée simple by discent. or by purchase, or if the heire demaūd the mariage of his mother, that is to say, the tenements that were giuen vnto his mother in frankmariage.

Also, where it is moued in diuers dedes these words in Latine, Ego & hæred. mei &c. warrantizabimus, & imperpetuū defendemus, it is to see what effect hath that word Defendemus in such deeds: & it seemeth that it hath not the effect of warrantize, nor comprehēdeth any clause of warrantize, for if it should be so that it taketh effect or cause of warrantize, then it should be put in some fines leuyed in the Kings Court. And a man neuer saw that this word Defendem' was in a fine, but only this word Warrantizabimus, by which it seemeth that this Verbe Warrantizo maketh warranty, and is the cause of warrantize, and none other word in our law.

Also, if Tenaunt in the taile be seised of tenements deuisable by testament after the custome &c. and the Tenant in the taile alieneth the tenements to his brother in fée, and hath issue and dieth, and after his brother deuiseth

by

by his testament ỹ same tenements to another in fee, and bindeth him & his heires to warrãtize &c. and dieth without issue, it seemeth that this warranty shall not barre the issue in the tayle, if he will sue his writ of Formedon, because that the warranty discended not to the issue in the tayle, insomuch as the vncle of the issue was not bound by force of the same warranty in his life, And the cause ỹ he could not warrãt the land in his life, is in so much that the deuise could not take any execution or effect but after his decease, & in so much that the vncle in his life was not hold to warranty, such warrantize may not discend from him to the issue in ỹ taile &c. for nothing may discend from the auncestor to his heire, but the same that was in the auncestor. Also a warranty may not goe after the nature of tenements by custome, but only after the forme of ỹ common law. For if tenãt in taile be seised of tenemẽts in borough english, where the custome is, that all tenements of the same borough, ought to discend to the yongest son, & hee discontinueth the taile with warranty &c. & hath issue two sons & dyeth seised of other lands & tenements in the same borough in fee simple to the value and more of the tenements tailed &c. yet the yongest sonne shal haue a Formedon of the tenements tayled, and shall not be barred by the warrantise of his Father, though enough to him discended in fee simple from the same Father after the custome, for this that the warrantise

rantise discendeth vpon the elder brother that is in full life &c. and not vpon the yongest son. In the same maner it is of collaterall warrãtize made of such tenemẽts where the warrãtize discendeth to the elder son &c. this shall not barre the yonger son &c. In the same maner it is of tenements in the Shire of Kent, which is called Gauelkind, the which tenements be departable among ẏ brethren &c. after the custome &c. if any such warrantie bee made by their auncestors, such warranty discendeth all onely to the heire ẏ is heire by the common law, & not to all the heires which are heires of such tenements after the custome &c.

Also, if tenant in in the taile haue issue two daughters by diuers venters and dyeth, and the daughters enter, and a stranger disseiseth them of the same tenements, and one of the daughters releaseth by her deed to the disseisor al her right, & bindeth her and her heires to warrantize and dyeth without issue, in this case the sister that suruiueth may well enter & put out the disseisor of all the tenements, for this that such warrantize is no discontinuance, nor collaterall warrantize to the sister that suruiueth, for this that they be of halfe blood, and the one may not be heire to the other after the common law. But otherwise it is where there be daughters of tenaunts in the taile by one venter.

Also, if tenant in the taile let tenements to another for terme of life, the remainder to an-

other in fée, & the collaterall auncester confir-meth the estate of the tenant for terme of life, and bindeth him and his heires to warrantize for terme of life of the tenant for terme of life & dyeth, and the tenant in the taile hath issue and dyeth, now this issue is barred to aske the tenemẽts by writ of Formedon during the life of the tenant for terme of life, because of the collaterall discent vpon the issue in the tayle. But after the decease of the tenant for terme of life, the issue shall haue a Formedon &c. And vpon this I haue heard a reason, that this case shall proue by an other case: that is to say, If a man let his land to an other, to haue & to hold vnto him & to his heires for terme of an others life, and the lessour dyeth, lyuing him to whose lyfe &c. and a stranger entreth into the land, that the heir of the lessée may put him out, for this that in the case next aforesaid, in so much that a man may binde him and his heires to warrant to the tenant for terme of life, all onely during the life of the tenant for terme of life, and the warrantize discendeth to the heire of him that made the warrantize, the which warrantize is no warrantize of inheri-tance, but all onely for terme of an others life. By the same reason where tenements be let to a man, to haue and to hold to him and to his heires for terme of an others lyfe. if the fa-ther die, lyuing him to whose lyfe &c. his heire shall haue the tenements lyuing him to whose life &c. For they haue said, that if a man grant

an annuity to an other, to haue and to take to him and to his heires for terme of an others life, if the grauntée die &c. that after his heire shall haue the annuitie during the life of him to whose life &c. Quære de ista materia &c.

But where such a lease or graunt is made to a man and his heires for terme of yéeres, in this case the heire of the lessée & the grauntée shall neuer haue after the death of the lessée or the grauntée that, that is so letten or graunted, for this that it is a chattell reall, and all chattels reals by the common law, shall come to the executors of the grauntée, or the lessée, and not to the heire &c.

Also in some cases it may be, that howbeit that a collateral warrantize be made in fée &c. yet such warrantize may be defeated and aniented. As the tenant in the taile discontinueth the taile in fée, & the discontinuée is disseised, & the brother of the tenant in the taile releaseth by his deed to the disseisor al his right &c. with warrantize in fée, and dieth without issue, and the tenant in the taile hath issue & dieth, now the issue is barred of his action by force of the collaterall warrantie descending vpon him, but if after this the discontinuée enter vpō the disseisour, then may the heire in the taile haue his action of Formedon &c. for this that the warranty is aniented & defeated. For when the warrantize is made vnto a man vpon any estate that then he had, if the estate be defeated, the warrantie is defeated.

In

In the same maner it is if the discontinuee make a feoffement in fee reseruing to him certein rent, & for default of paiment a reentrie &c. & a collaterall auncester releaseth to the feoffee that hath estate vpon condition &c. and dyeth without issue, though that the warranty discended vpon the issue in the taile, yet if after the rent be behind, & the discontinuee entreth into the land &c. then the issue in the taile shall haue his recouery by a writ of Formedon, for this that the warranty collaterall is defeated. And so if any such collaterall warranty be pleaded against the issue in the taile in his action of Formedon, he may shew the matter as is aforesaid, how the warrantie is defeated, and so he may well maintaine his action.

Also if a tenant in the taile make a feffement to his vncle, & after his vncle maketh a feoffement in fee with warrantize &c. to an other, & after the feffee of the vncle enfeffeth againe the vncle in fee, & after ỹ vncle enfeffeth a stranger in fee without warrantize, and dieth without issue, & the tenant in the taile will bring his writ of Formedon against the stranger that was ỹ last feffee, & that by ỹ vncle, in this case the issue shal neuer be barred by the warranty that was made by ỹ vncle of the said first feffee of his vncle, for this that the said warrantize was defeated & anięted, for this that the vncle tooke againe to him as great estate of his said first feffee to whom the warrātize was made, as the same feoffee had of him: And the cause

why

why the warrantie is anienied in this case, is this, that is to say, that if the warrantize were in his force, then the vncle shall warrant a fée simple vnto himselfe, that may not be, but if the feffée made estate to the vncle for terme of life, or in fée taile, sauing the reuersion vnto him &c. Or that he made a gift in the taile to the vncle, or a lease for terme of life, the remainder ouer &c. In this the warrantize is not all vterly anienied, but it is put in suspence during the estate that the vncle had, for after this that the vncle is dead without issue, then he in the reuersion, or he in the remainder shal barre the issue in the taile of his writ of Formdon by the collaterall warrantize in such case &c. But otherwise it is where the vncle had as great estate in the land by the feffée to whom ỹ warrantize was made as the feffée had of him &c.

Also, if the vncle after such feoffement made with warrantize, or a releale made by him with warrantize be attaint of felony, or outlawed of felony, such collaterall warranty shal not barre nor greeue the issue in the taile, for this that by the attainder of felony, the bloud is corrupt betweene them &c.

Also, if tenant in the taile be disseised, and after maketh a releale to the disseisour with warrantize in fée, and after the tenant in the taile is attaint or outlawed of felony, and hath issue and dyeth, in this case the issue in the taile may enter vpon the disseisour: And the cause is for this, that nothing maketh dis-

continuance in this case but the warranty, & the warranty may not discend to the issue in the taile, for this that the blood is corrupt betweene him ỹ made the warrantize & the issue in the taile, for the warrantize alway abideth at the common law, and the common law is such that when a man is outlawed or attaint of felony, which outlawrie is an attainder in the law, that the blood betweene him and his sonne and all other which should bee said his heires is corrupt, so ỹ nothing by discent may discend to any that may be his heire by ỹ common law: And that wife of such a man ỹ is so attaint shal neuer be indowed in the tenemẽts of her husbãd so attaint &c. And ỹ cause is, because men should more eschue to do felony &c. But the issue in the taile, as to the tenements tailed, is not in such case barred, because hee is inheritable by force of the statute, & not by the course of the common law. And therfore such attainder of his father or his auncester in the taile &c. shall not put him out of his right, that he should haue by force of the taile.

Also, if tenaunt in the tayle enfeoffe his vncle which enfeoffeth another with warranty &c. if after the feoffee by his deed release to the vncle al maner of warranties, or al maner of couenants reals, or al maner of demaunds, by such releasse the warranty is extinct. And if the warranty in such case bee pleaded against the heire in the tayle that bringeth his writ of Formedone to barre the heire of his

his action, if the heire haue and plede the said release &c. he shall defeate the plee in barre &c. and many other causes and matters there be whereby a man may defeate warranties.

And it is to wit, that in the same maner as collaterall warranty may be defeated by matter in deed or in law, the same manner may lineall warranty be defeated &c. For if the heire in the taile bring a Writ of Formedon, and a lineall warranty of his auncester inheritable by force of the taile be pleaded against him with that the assets to him discended of fee simple by the same auncester that made the warranty, if the heire that is demaũdant may annull and defeate the warrantie, this sufficeth to him, for the discent of other tenements of fee simple make nothing to barre the heire without the warranty &c.

FINIS.

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¶Here beginneth the Table of this preſent Booke.

NOw I haue made for thée my ſonne three Bookes. The firſt is of Eſtates that men haue of lands or tenements, that is to ſay.

Of Tenant in fée ſimple.
Tenant in fée taile.
Tenant in the tayle after poſſibilitie of iſſue extinct.
Tenant by the Curteſie of England.
Tenant in Dower.
Tenant for terme of life.
Tenant for terme of yeares.
Tenant at will by the Common law.
Tenant at will by the cuſtome of the manor.

The ſecond Booke.

The ſecond Booke is of homage.

Fealty.
Eſcuage.
Knights ſeruice.
Socage.
Frankealmoigne, or free almes.
Homage aunceſtrell.
Graund Sergeanty.
Petie Sergeanty.
Tenure in Burgage.
Tenure in Villenage.
Of three maner of Rents, that is to ſay.
Rent ſeruice.

Rent

Rent charge, and
Rent secke.

And these two small bookes haue I made for thée, for to vnderstād better certaine chapters of the auncient bookes of Tenures.

The third Booke.

The third Booke is of Parceners.
Of Iointenants.
Tenants in common.
Estates of landes or tenements vpon condition.
Discents that take away Entries.
Continuall claime.
Releases.
Confirmations.
Attournements.
Remitters.
Of Garranties, that is to say.
Garranty lineall.
Garranty collaterall, and
Garranty that beginneth by disseisin.

And know thou my sonne, that I will not that thou beléeue, that all that that I haue said in the said Bookes is law, for that will I not take vpon me, nor presume: But of those things that be not law, inquire and learne of my wise masters learned in the law.

Notwithstanding, though that certaine thinges that be noted and specified in the said

Bookes

Bookes be not Law, yet such thinges shall make thée more apt and able to vnderstand, and learne the Arguments and the reasons of the Law: For by the arguments and the reasons in the Law, a man may more soner come to the certaintie, and to the knowledge of the Law.

Lex plus laudatur, quando ratione probatur.

FINIS.